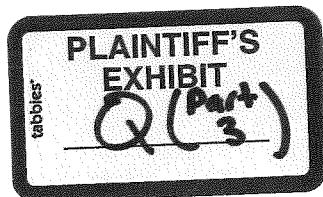


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<p style="text-align: right;">400</p> <p>1 anything to that effect?</p> <p>2 <b>A. He said that the port in the U.S. was still</b></p> <p>3 <b>open.</b></p> <p>4 Q. Where did you get your understanding that</p> <p>5 Tricon would be selling out of at least at that time</p> <p>6 USG?</p> <p>7 <b>A. They would be loaded -- the origin -- my</b></p> <p>8 <b>understanding was that the origin that called -- the</b></p> <p>9 <b>origin of the cargo was United States --</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. -- which may be the U.S. Gulf.</b></p> <p>12 Q. If Mr. Leyman had told you that Tricon was not</p> <p>13 guaranteeing U.S. origin, what would you have done?</p> <p>14 <b>A. I wouldn't have bought the cargo. I had no</b></p> <p>15 <b>place to sell it. I couldn't count on the Asian traders</b></p> <p>16 <b>taking it.</b></p> <p>17 MR. LEE: I'm going to mark Exhibit 39.</p> <p>18 Q. (BY MR. LEE) Take a look at that, if you</p> <p>19 would, sir.</p> <p>20 MR. LEE: I had two of those. Sorry.</p> <p>21 (The following was a comment made by</p> <p>22 Mr. Lee during the playback.)</p> <p>23 MR. LEE: That's also Vinmar Exhibit 2.</p> <p>24 (End of comment made by Mr. Lee.)</p> <p>25 Q. (BY MR. LEE) Do you recognize Exhibit 39?</p>	<p style="text-align: right;">402</p> <p>1 <b>A. Uh-huh. That's right.</b></p> <p>2 Q. And was that -- what's that based on?</p> <p>3 <b>A. If -- a CFR deal means that the seller</b></p> <p>4 <b>arranges freight so I didn't need to.</b></p> <p>5 Q. Then you went on to tell him lifting is first</p> <p>6 week of August. So they already had shipping arranged.</p> <p>7 What do you mean they -- the lifting was to be the first</p> <p>8 week of August?</p> <p>9 <b>A. I meant that the -- my understanding of the</b></p> <p>10 <b>deal with Tricon was that the material is going to be</b></p> <p>11 <b>U.S. origin and that the pick-up was going to be in</b></p> <p>12 <b>August.</b></p> <p>13 <b>And the reason that was important was that</b></p> <p>14 <b>I knew that Formosa had two windows of opportunity. The</b></p> <p>15 <b>first -- I believe the first in September so I needed to</b></p> <p>16 <b>ensure that the material actually arrived in September.</b></p> <p>17 <b>It takes time to sail from the United States to Taiwan.</b></p> <p>18 Q. Just so that we're all clear, I want to make</p> <p>19 sure I understand the terminology. What do you mean by</p> <p>20 lifting?</p> <p>21 <b>A. I mean the pick-up at the -- pick-up at the</b></p> <p>22 <b>port, the lifting by the ship of the cargo, moving it</b></p> <p>23 <b>from the tank into the cargo hold.</b></p> <p>24 Q. Who had told you that Tricon had already</p> <p>25 arranged the shipping?</p>
<p style="text-align: right;">401</p> <p>1 <b>A. Yeah.</b></p> <p>2 Q. And are those e-mails that you exchanged with</p> <p>3 a gentleman named Nicholas Smith?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. Who is Nicholas Smith?</p> <p>6 <b>A. I believe he's a ship charterer. I just don't</b></p> <p>7 <b>remember the name of the company that he dealt with.</b></p> <p>8 Q. Was -- how was Mr. Smith aware that you were</p> <p>9 in the market to buy MX on July 22nd, 2008?</p> <p>10 <b>A. Well, because the first thing you need to do</b></p> <p>11 <b>if you're guaranteeing a physical delivery is to make</b></p> <p>12 <b>sure that you have the ship. So before you tell a</b></p> <p>13 <b>customer, "I'm going to deliver on such and such date,"</b></p> <p>14 <b>you'd be better be able to deliver it.</b></p> <p>15 <b>So essentially what I did was I put on</b></p> <p>16 <b>hold a ship that could pick up material in the United</b></p> <p>17 <b>States.</b></p> <p>18 Q. Let me approach it this way, mister -- or</p> <p>19 Dr. Wilson. Why would you have been in contact with</p> <p>20 Mr. Smith on July 22nd to arrange shipping?</p> <p>21 <b>A. So that I could ship MX to Asia from the</b></p> <p>22 <b>United States.</b></p> <p>23 Q. At the last e-mail, which is at the top of</p> <p>24 Exhibit 39, you mentioned to Mr. Smith that the seller</p> <p>25 is handling freight?</p>	<p style="text-align: right;">403</p> <p>1 <b>A. I think that was part of the CFR deal.</b></p> <p>2 Q. What does this -- Exhibit 39, what does that</p> <p>3 tell us about your understanding of the deal that you</p> <p>4 thought had been concluded between Tricon and Vinmar?</p> <p>5 <b>A. My understanding was it was U.S. origin.</b></p> <p>6 Q. Let me show you what's previously been marked</p> <p>7 as Exhibit 15.</p> <p>8 (The following was a comment made by</p> <p>9 Mr. Lee during the playback.)</p> <p>10 MR. LEE: It's Joint Exhibit 5.</p> <p>11 (End of comment made by Mr. Lee.)</p> <p>12 Q. (BY MR. LEE) Do you recognize this e-mail</p> <p>13 exchange between you and Mr. Lockwood?</p> <p>14 <b>A. Yes, vaguely.</b></p> <p>15 Q. Okay. What I want to ask you about right now</p> <p>16 is the e-mail that you sent to Mr. Lockwood there on</p> <p>17 July 23rd at about 3:28, so it's the one in the middle.</p> <p>18 <b>A. Uh-huh.</b></p> <p>19 Q. And you asked, "Brad, could you please send me</p> <p>20 the RCAP for the shipping you arranged for this cargo?"</p> <p>21 What is -- what do you mean by RCAP?</p> <p>22 <b>A. RCAP. So what that means is that the broker</b></p> <p>23 <b>will supply, "Here's the ship. Here's the details."</b></p> <p>24 <b>And I did that on the belief that the material was</b></p> <p>25 <b>loading very soon in order for it to get to Asia in</b></p>

24 (Pages 400 to 403)



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<p style="text-align: right;">404</p> <p>1 time.</p> <p>2 Q. Now, Mr. Lockwood's response is that "We have</p> <p>3 a couple of different options to use." Do you see that?</p> <p>4 A. Yeah.</p> <p>5 Q. Was that consistent with your understanding of</p> <p>6 the deal as it had been relayed to you on July 22nd,</p> <p>7 2008?</p> <p>8 A. There is nothing in the statement that</p> <p>9 contradicts my understanding of the deal, and that was</p> <p>10 that he was going to provide to me U.S. origin material,</p> <p>11 but there was flexibility, specifically at what port in</p> <p>12 the United States that MX would be picked up at.</p> <p>13 Q. As of July 23rd, 2008, what was your</p> <p>14 understanding of the deal that purportedly had been</p> <p>15 concluded between Tricon and Vinmar?</p> <p>16 A. My understanding was that purchasing U.S.</p> <p>17 origin material of MX to arrive in Taiwan in</p> <p>18 September -- to arrive in Asia in September. I don't</p> <p>19 remember the details. I may not have nominated the port</p> <p>20 because I was reluctant to -- I was reluctant to</p> <p>21 disclose who my buyer was.</p> <p>22 Q. Let me show you what's previously been marked</p> <p>23 as Exhibit 31. And this is a -- an e-mail exchange</p> <p>24 between you and a gentleman by the name of Eduardo</p> <p>25 Anaya. Correct?</p>	<p style="text-align: right;">406</p> <p>1 A. That's right.</p> <p>2 Q. Okay. And what is it that you were saying to</p> <p>3 Mr. Anaya at that time?</p> <p>4 A. That I didn't know the port that the material</p> <p>5 was going to load out of.</p> <p>6 Q. Was this a comment on the origin of the</p> <p>7 material?</p> <p>8 A. Yeah. I -- what I said was most likely a port</p> <p>9 in the U.S. Gulf. That's correct.</p> <p>10 Q. Had Tricon provided to you any information</p> <p>11 about the port where this product would be loaded as of</p> <p>12 July 25th, 2008?</p> <p>13 A. No, I don't believe so.</p> <p>14 Q. And when you responded to Mr. Anaya's</p> <p>15 question -- I just want to be clear on this. What --</p> <p>16 what question were you responding to?</p> <p>17 A. The question I was responding to was, "We need</p> <p>18 the port of origin of this product," and I didn't know.</p> <p>19 Q. What was your understanding as of July 25th</p> <p>20 about the origin of the product?</p> <p>21 A. My understanding of the origin, it was from</p> <p>22 the United States and that it could be picked up at any</p> <p>23 port at the choice of Tricon in the United States.</p> <p>24 Q. I don't want to -- I don't want to pry into</p> <p>25 your personal details, Dr. Wilson, but as I understand</p>
<p style="text-align: right;">405</p> <p>1 A. That's right.</p> <p>2 Q. And who is Mr. Anaya?</p> <p>3 A. I believe he was the gentleman responsible for</p> <p>4 entering the terms of the deal into the SAP system.</p> <p>5 Q. In the first e-mail down at the bottom of the</p> <p>6 page from Mr. Anaya to you at 4:03 p.m., he asked you --</p> <p>7 first of all, he tells you he's going to do the</p> <p>8 follow-up from the logistics point of view.</p> <p>9 And then he says, "To complete the order,</p> <p>10 we just need the port of origin of this product." Do</p> <p>11 you see that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. What was your understanding of what he was</p> <p>14 asking you?</p> <p>15 A. He needed the specific port where the material</p> <p>16 would load out of.</p> <p>17 Q. Do you know why?</p> <p>18 A. Because the SAP system requires it.</p> <p>19 Q. Okay. And when you say "specific port," you</p> <p>20 mean actually where the product would be picked up?</p> <p>21 A. That's right.</p> <p>22 Q. You responded the next day to Mr. Anaya's</p> <p>23 e-mail and said, "Re: Origin. We won't know until we</p> <p>24 declare discharge port. Most likely USG." Do you see</p> <p>25 that?</p>	<p style="text-align: right;">407</p> <p>1 it in the summer of 2008, in addition to your work</p> <p>2 responsibilities, you were also dealing with some family</p> <p>3 medical issues. Is that correct?</p> <p>4 A. Several family issues, yes.</p> <p>5 Q. Do you recall during this period of time</p> <p>6 between the 22nd of July and the end of July that you</p> <p>7 were, in fact, dealing with some of those medical --</p> <p>8 A. Yes, I was actually.</p> <p>9 Q. Okay.</p> <p>10 A. I may have actually let one of the secretaries</p> <p>11 know that I wasn't very available.</p> <p>12 Q. And how did that impact your day-to-day work</p> <p>13 routine?</p> <p>14 A. I think I unfortunately became completely</p> <p>15 unplugged from the day-to-day operations of my -- of my</p> <p>16 job.</p> <p>17 Q. And that was during this period of time in</p> <p>18 late July?</p> <p>19 A. That's right.</p> <p>20 Q. If you look at the e-mail from Vuk Rajevac to</p> <p>21 Laurentiu down at the bottom of the third page, in</p> <p>22 Item 3, Paragraph No. 3 there, Mr. Rajevac makes the</p> <p>23 comment, "As far as the shipment details, we sold on a</p> <p>24 CFR basis with arrival windows. So once you declare the</p> <p>25 discharge port by August 8th, we will be able to decide</p>

25 (Pages 404 to 407)

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<p style="text-align: right;">408</p> <p>1 whether to give you a deep sea cargo, which at that</p> <p>2 point will mostly already be on the water, or on Asian</p> <p>3 origin cargo." Do you see that?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. What does that mean to you, that Tricon might</p> <p>6 provide a deep sea or Asian origin cargo?</p> <p>7 <b>A. That they were not going to necessarily</b></p> <p>8 <b>deliver the U.S. origin material that I required in</b></p> <p>9 <b>order to execute the sale that I was able to sell.</b></p> <p>10 Q. And receiving this e-mail from Mr. Pascu, is</p> <p>11 that when you first learned that Tricon was claiming</p> <p>12 that it required -- that it was not required to sell</p> <p>13 Vinmar U.S. origin MX?</p> <p>14 <b>A. I don't remember the exact moment of my</b></p> <p>15 <b>discovery, no.</b></p> <p>16 Q. Was it around July 31st?</p> <p>17 <b>A. I believe it was in this timeframe, yeah.</b></p> <p>18 Q. What did you mean when you said, "We cannot</p> <p>19 accept open origin for this material. It must be from</p> <p>20 the USA"?</p> <p>21 <b>A. I meant that the material had to originate in</b></p> <p>22 <b>the United States --</b></p> <p>23 Q. And --</p> <p>24 <b>A. -- for us to accept the deal. That's my</b></p> <p>25 <b>understanding of the deal.</b></p>	<p style="text-align: right;">410</p> <p>1 losing side of a trade, but I thought I was very clear</p> <p>2 what the terms were and that I recognized that while I</p> <p>3 would suffer the consequence in terms of my compensation</p> <p>4 and my relationship with the owners of Vinmar, I decided</p> <p>5 that I was better off in the long run sticking to what I</p> <p>6 originally thought were the terms of this agreement,</p> <p>7 taking a loss, in the interest of preserving my</p> <p>8 relationship and my reputation.</p> <p>9 Q. Did Tricon ever accept the terms that you put</p> <p>10 forward --</p> <p>11 <b>A. No.</b></p> <p>12 Q. -- on Exhibit 9?</p> <p>13 <b>A. I don't believe they did.</b></p> <p>14 Q. And do you agree that there was no origin</p> <p>15 guarantee on the MX?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Now, there are two alternatives that are</p> <p>18 presented in this e-mail by Mr. Lockwood to you. The</p> <p>19 first one is U.S. origin at 843 spec. Is that a</p> <p>20 different spec than 5211?</p> <p>21 <b>A. It is a different spec, yes.</b></p> <p>22 Q. Okay. And then there is the second</p> <p>23 alternative, which is U.S. origin, but it wouldn't</p> <p>24 arrive until October 15th, 2008. Were either one of</p> <p>25 these alternatives acceptable to you?</p>
<p style="text-align: right;">409</p> <p>1 Q. Why did you go back to Mr. Leyman on the 31st</p> <p>2 and tell him that there was an issue with Tricon?</p> <p>3 <b>A. I don't remember my thinking at the time. I</b></p> <p>4 <b>can only infer what I would do if I had to do it today,</b></p> <p>5 <b>which would be to go bring the issue up to the broker</b></p> <p>6 <b>who made the mistake.</b></p> <p>7 Q. Okay. Do you remember that in the days</p> <p>8 following July 22nd, 2008, that the price for MX fell</p> <p>9 fairly considerably?</p> <p>10 <b>A. I do remember that. It was actually a big</b></p> <p>11 <b>surprise to me.</b></p> <p>12 Q. Why was that?</p> <p>13 <b>A. Because the U.S. was tight.</b></p> <p>14 Q. Let me I guess ask from the -- in the first</p> <p>15 perspective, were the terms that you mentioned in this</p> <p>16 e-mail to Mr. Leyman the terms that you had originally</p> <p>17 expressed to him on July 22nd, 2008?</p> <p>18 <b>A. That's right.</b></p> <p>19 Q. Why is it that Vinmar was still willing to buy</p> <p>20 U.S. origin MX at 1310 a metric ton on August the 6th,</p> <p>21 2008?</p> <p>22 <b>A. Well, I don't know that it was Vinmar. It was</b></p> <p>23 <b>Rick Wilson.</b></p> <p>24 Q. Okay.</p> <p>25 <b>A. And the way I saw this was I knew I was on the</b></p>	<p style="text-align: right;">411</p> <p>1 <b>A. No.</b></p> <p>2 Q. Why not?</p> <p>3 <b>A. Because the only -- the only sales I knew I</b></p> <p>4 <b>could actually make were in September. And, number one,</b></p> <p>5 <b>in terms of the timing of the second -- the 843, also, I</b></p> <p>6 <b>didn't -- I wasn't aware of any customers willing to</b></p> <p>7 <b>accept that specification. I believe it's a lesser</b></p> <p>8 <b>specification, less stringent quality.</b></p> <p>9 Q. Is Exhibit 10 in response to Mr. Lockwood's</p> <p>10 e-mail which was Exhibit 18?</p> <p>11 <b>A. I don't remember specifically the e-mail, but</b></p> <p>12 <b>the -- but it would appear that's the case, yes.</b></p> <p>13 Q. Let me show you Exhibit 11 and ask if that is</p> <p>14 an e-mail that you sent to Mr. Leyman on August the 8th,</p> <p>15 2008.</p> <p>16 <b>A. I don't remember sending e-mails from two</b></p> <p>17 <b>years ago, but it would appear that this was an e-mail</b></p> <p>18 <b>from me.</b></p> <p>19 Q. Do you believe --</p> <p>20 <b>A. Certainly this is in the spirit of my</b></p> <p>21 <b>understanding of what would have happened in the course</b></p> <p>22 <b>of this trade. Yes. As soon as there was an issue, you</b></p> <p>23 <b>will let all parties know. You would have been clear</b></p> <p>24 <b>about your rejection to the offer.</b></p> <p>25 Q. Okay. Is it your understanding that Tricon</p>

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<p style="text-align: right;">412</p> <p>1 never agreed to meet Vinmar's terms for this post sale?</p> <p>2 <b>A. That's my understanding. Tricon never agreed</b></p> <p>3 <b>to the terms that I thought were in place.</b></p> <p>4 Q. After you left Vinmar's employment, did you</p> <p>5 receive a call from Brad Lockwood at Tricon?</p> <p>6 <b>A. I did.</b></p> <p>7 Q. What did Mr. Lockwood say to you?</p> <p>8 <b>A. He called me and questioned whether there was</b></p> <p>9 <b>an issue about this trade. And he asked me about the</b></p> <p>10 <b>nature of my employment with Vinmar. He asserted that</b></p> <p>11 <b>it's a very difficult place to work. He said that it</b></p> <p>12 <b>would be very beneficial for him if he could -- if I</b></p> <p>13 <b>could side on the side of Tricon, it would be my</b></p> <p>14 <b>opportunity to get back at Vinmar.</b></p> <p>15 Q. Why would it be beneficial to him; did he tell</p> <p>16 you?</p> <p>17 <b>A. He said because his bonus is based on it and</b></p> <p>18 <b>he has a family to support.</b></p> <p>19 Q. And what did you say to Mr. Lockwood?</p> <p>20 <b>A. I think my response to him was that I</b></p> <p>21 <b>agreed -- I agreed that the reality is Vinmar is a very</b></p> <p>22 <b>difficult place to work, but I actually thought it was a</b></p> <p>23 <b>go ahead experience for me, from a professional</b></p> <p>24 <b>perspective, and I couldn't help him.</b></p> <p>25 Q. Did you explain to Mr. Lockwood in that</p>	<p style="text-align: right;">414</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Okay. When did you meet Mr. Lee?</p> <p>3 <b>A. Yesterday.</b></p> <p>4 Q. Okay. And about what time yesterday?</p> <p>5 <b>A. 1:00 p.m.</b></p> <p>6 Q. Okay. Did you and he talk about what was</p> <p>7 going to happen during the deposition?</p> <p>8 <b>A. What we did was we went through the documents</b></p> <p>9 <b>and he familiarized me with them.</b></p> <p>10 Q. Okay. And how long did that meeting last?</p> <p>11 <b>A. Till roughly 3:30, 4:00 o'clock.</b></p> <p>12 Q. Okay. So two and a half to three hours?</p> <p>13 <b>A. That's right.</b></p> <p>14 Q. Okay. Mr. Lee sometime in the past asked you</p> <p>15 to sign an affidavit in this case, did he not?</p> <p>16 <b>A. He did.</b></p> <p>17 Q. And you did not sign the affidavit?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. Why did you not sign the affidavit?</p> <p>20 <b>A. My wife reminded me that she didn't think that</b></p> <p>21 <b>Vinmar could be trusted and that I shouldn't sign any</b></p> <p>22 <b>document that they presented me without first seeking</b></p> <p>23 <b>legal counsel and that we didn't want to spend the money</b></p> <p>24 <b>on legal counsel so we ignored it.</b></p> <p>25 Q. Okay. Mr. Wilson, when you -- Dr. Wilson,</p>
<p style="text-align: right;">413</p> <p>1 conversation that it was your view that the deal</p> <p>2 required U.S. origin MX?</p> <p>3 <b>A. I believe so, yes.</b></p> <p>4 <b>EXAMINATION</b></p> <p>5 <b>BY MR. DIAZ-ARRASTIA:</b></p> <p>6 Q. My name is a George Diaz-Arrastia. I am the</p> <p>7 Laurentiu that represents Tricon in this matter. Have</p> <p>8 you and I ever met before?</p> <p>9 <b>A. I don't believe so, no.</b></p> <p>10 Q. Have we ever spoken on the telephone?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Okay. Have you ever spoken on the telephone</p> <p>13 with anybody from my office?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Do you remember who you spoke with on the</p> <p>16 telephone?</p> <p>17 <b>A. It was a woman.</b></p> <p>18 Q. Do you remember what you-all talked about?</p> <p>19 <b>A. She called me and threatened to subpoena me at</b></p> <p>20 <b>her convenience. Yes.</b></p> <p>21 Q. Okay. Was there any discussion about the</p> <p>22 facts of this case?</p> <p>23 <b>A. I believe I told her that I did not believe</b></p> <p>24 <b>there was a deal to purchase non-U.S. origin MX.</b></p> <p>25 Q. Did you meet Mr. Lee before this morning?</p>	<p style="text-align: right;">415</p> <p>1 when you bought MX from Tricon in this transaction</p> <p>2 that's the subject of this matter, was there a specific</p> <p>3 buyer that you were going to sell that MX to?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay. And what was that buyer?</p> <p>6 <b>A. Formosa.</b></p> <p>7 Q. Okay. And Formosa is the name of a company?</p> <p>8 <b>A. That's right.</b></p> <p>9 Q. Okay. And what's the full name of that</p> <p>10 company?</p> <p>11 <b>A. I don't remember.</b></p> <p>12 Q. Okay. Dr. Wilson, if you would take a look at</p> <p>13 Exhibit No. 40. If you would look at the second page of</p> <p>14 Exhibit 40, sir.</p> <p>15 <b>A. Okay.</b></p> <p>16 Q. And it is an e-mail between you and Jason</p> <p>17 Luoh?</p> <p>18 <b>A. That's right.</b></p> <p>19 Q. You have to say -- he is the -- Vinmar's agent</p> <p>20 in Asia?</p> <p>21 <b>A. That's right.</b></p> <p>22 Q. Okay. And is the firm offer for 1325 CFR</p> <p>23 Taiwan or Korea, is that referring to the sale that you</p> <p>24 had in mind when you bought the Tricon MX?</p> <p>25 <b>A. Well, apparently I never bought this, but that</b></p>



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<p style="text-align: right;">416</p> <p>1 was the sale I was trying to make, yes.</p> <p>2 Q. Okay. And if you will look at the -- and</p> <p>3 given the price was 1325 and you were paying 1310 to</p> <p>4 Tricon if this sale had been made, you would have turned</p> <p>5 a profit on the deal?</p> <p>6 A. That's right.</p> <p>7 Q. Okay. And if you will look at the first page</p> <p>8 of Exhibit 40.</p> <p>9 A. Uh-huh.</p> <p>10 Q. And at the bottom of the page, Mr. Luoh is</p> <p>11 telling you, "We can't join -- blank -- tender." It was</p> <p>12 redacted. "We didn't present our firm offer in time."</p> <p>13 So you lost that sale?</p> <p>14 A. Yes.</p> <p>15 Q. That is because you didn't get your firm offer</p> <p>16 in on time?</p> <p>17 A. That's right. Jason was not able to get into</p> <p>18 the offices of Formosa in time, that's correct.</p> <p>19 Q. Was this an -- if you'll look at the very top</p> <p>20 of Exhibit 40, sir, Mr. Luoh is again telling you in</p> <p>21 this case what the winning bid was. Correct?</p> <p>22 A. That's correct.</p> <p>23 Q. It was 1305?</p> <p>24 A. That's correct.</p> <p>25 Q. And that is less than the price that Tricon</p>	<p style="text-align: right;">418</p> <p>1 mutual broker. Didn't you say that, sir?</p> <p>2 A. I'd say he was a broker doing a deal between</p> <p>3 two counterparties.</p> <p>4 Q. Okay. And the counterparties did not speak to</p> <p>5 each other; they communicated only through the broker.</p> <p>6 Correct, sir?</p> <p>7 A. That was the nature of the relationship, yes.</p> <p>8 Q. And that meant that Mr. Leyman represented</p> <p>9 both sides to the transaction. Is that your</p> <p>10 understanding?</p> <p>11 A. That's my understanding.</p> <p>12 Q. If you can look at Exhibit No. 2, Mr. Wilson,</p> <p>13 do you remember getting this document on July 22nd from</p> <p>14 MOAB Oil?</p> <p>15 A. I remember seeing it before. I don't remember</p> <p>16 specifically getting it on that date.</p> <p>17 Q. Okay. Ed Leyman worked for MOAB Oil.</p> <p>18 Correct?</p> <p>19 A. That's right.</p> <p>20 Q. Now, the purpose of Exhibit No. 2 is to</p> <p>21 confirm the transaction that Mr. Leyman had brokered</p> <p>22 between Tricon and Vinmar. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you saw Exhibit No. 2. Correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">417</p> <p>1 was going to sell you?</p> <p>2 A. That's right.</p> <p>3 Q. And you learned that you were not going to</p> <p>4 make the 13.5 sale to Formosa on July 23rd at about</p> <p>5 11:48 a.m. Is that correct?</p> <p>6 A. Yep.</p> <p>7 Q. That's -- sir, did you already have your job</p> <p>8 offer from Cobalt Technologies when you left Vinmar?</p> <p>9 A. No.</p> <p>10 Q. When did you get the job offer from Cobalt?</p> <p>11 A. It was very close to the time that I started.</p> <p>12 Q. And when did you start?</p> <p>13 A. The very end of October.</p> <p>14 Q. And you left Vinmar October the 3rd?</p> <p>15 A. I believe that was the date, yes.</p> <p>16 Q. Did you spend maybe about three weeks where</p> <p>17 you didn't have a job lined up?</p> <p>18 A. That's right.</p> <p>19 Q. You had done deals using Ed Leyman as a broker</p> <p>20 prior to the deal that's the subject matter of this</p> <p>21 case. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. About how many?</p> <p>24 A. Small number. Less than five.</p> <p>25 Q. Okay. Well, I think you did say that he was a</p>	<p style="text-align: right;">419</p> <p>1 Q. Did you see it on July 22nd?</p> <p>2 A. I do not remember the exact date that I saw</p> <p>3 it.</p> <p>4 Q. Okay. Did you find Mr. Leyman to be a</p> <p>5 competent broker, sir, when you used him?</p> <p>6 A. Yes.</p> <p>7 Q. If you would take a look at the second page of</p> <p>8 Exhibit No. 2, sir, near the -- near the bottom, right</p> <p>9 above where it says Page 1 of 2 on the right hand --</p> <p>10 lower right-hand corner.</p> <p>11 It says, "If there is anything outlined</p> <p>12 contrary to your understanding of our agreement, please</p> <p>13 notify us immediately."</p> <p>14 A. I see that, yes.</p> <p>15 Q. Did you see that back on July 22nd?</p> <p>16 A. This is -- I don't remember seeing it.</p> <p>17 Q. Had you seen that in the prior confirms that</p> <p>18 Mr. Leyman had sent you in other deals?</p> <p>19 A. I don't remember seeing it, no.</p> <p>20 Q. Now, Mr. Leyman, after receiving this initial</p> <p>21 confirm, you requested a change on the payment terms for</p> <p>22 this transaction. Do you recall that, sir?</p> <p>23 A. Yes.</p> <p>24 Q. The payment terms on Exhibit 2 refer to</p> <p>25 30 days. Correct, sir?</p>

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<p style="text-align: right;">420</p> <p>1     <b>A. That's what's represented. That's correct.</b></p> <p>2     Q. And you had -- you had requested to change</p> <p>3     that to an on site letter of credit. Do you remember</p> <p>4     that?</p> <p>5     <b>A. I believe originally I was seeking 45-day</b></p> <p>6     <b>terms. And then once there was a CFR deal, there --</b></p> <p>7     <b>there was some changes. I don't remember the details.</b></p> <p>8     Q. Okay. And was it an on site letter of credit?</p> <p>9     <b>A. I believe one of the documents you provided me</b></p> <p>10    <b>indicated that it was. That was a request, but I don't</b></p> <p>11    <b>remember making that request.</b></p> <p>12    Q. Okay. Let me show you what's been previously</p> <p>13    marked as Exhibit No. 6. And these appear to be instant</p> <p>14    messages between yourself and Ed Leyman --</p> <p>15    <b>A. That's correct.</b></p> <p>16    Q. -- on July 22, 2008?</p> <p>17    <b>A. That's right.</b></p> <p>18    Q. Okay. And if you look towards the bottom of</p> <p>19    the page at 4:09:37 p.m. Do you see that, sir?</p> <p>20    <b>A. That's right.</b></p> <p>21    Q. Where it says Rick -- I guess that's you --</p> <p>22    asking Mr. Leyman, "Did you get the LC site terms?"</p> <p>23    <b>A. That's correct.</b></p> <p>24    Q. And then Mr. Leyman says, "Not yet. We'll</p> <p>25    recheck." And then at 4:18:07 he says that "Tricon okay</p>	<p style="text-align: right;">422</p> <p>1     <b>A. I do remember that, yes.</b></p> <p>2     Q. Okay. Had you noticed that mistake in the</p> <p>3     price term -- in the price term?</p> <p>4     <b>A. At some point -- at some point in the -- at</b></p> <p>5     <b>some point in this I did recognize there was an error in</b></p> <p>6     <b>the price, yes.</b></p> <p>7     Q. Okay. And did you notify Mr. Leyman about it?</p> <p>8     <b>A. I don't remember that.</b></p> <p>9     Q. I'll show you now what has previously been</p> <p>10    marked as Exhibit 4. If you'll look in the second page</p> <p>11    of Exhibit 4, the price term has been changed from 1110</p> <p>12    per metric ton to 1310 per metric ton. Is that right,</p> <p>13    sir?</p> <p>14    <b>A. Yes.</b></p> <p>15    Q. And 1310 was the correct price. Isn't that</p> <p>16    so? That was agreed to?</p> <p>17    <b>A. I believe so.</b></p> <p>18    Q. And, again, on Exhibit 4, near the bottom in</p> <p>19    the same place where we saw it in the other two</p> <p>20    exhibits, it also contains the statement, "If there is</p> <p>21    anything outlined contrary to your understanding of our</p> <p>22    agreement, please notify us immediately by facsimile."</p> <p>23    <b>A. That's right.</b></p> <p>24    Q. Nowhere in Exhibits 2, 3 or 4 is there a term</p> <p>25    that says "U.S. origin must be guaranteed for this MX."</p>
<p style="text-align: right;">421</p> <p>1     with LC site. Will send out amendment." Did I read</p> <p>2     that correctly, sir?</p> <p>3     <b>A. That's right.</b></p> <p>4     Q. I'll show you what has been previously marked</p> <p>5     as Exhibit 3, two of these. And that is another MOAB</p> <p>6     confirm. Correct?</p> <p>7     <b>A. That's correct.</b></p> <p>8     Q. It's also dated July 22, 2008?</p> <p>9     <b>A. That's correct.</b></p> <p>10    Q. And if you will take a look at the second</p> <p>11    page, the payment terms have been changed to payment</p> <p>12    outside by document or letter of credit?</p> <p>13    <b>A. That's correct.</b></p> <p>14    Q. Did you receive Exhibit No. 3, sir?</p> <p>15    <b>A. I don't remember receiving it, but the e-mail</b></p> <p>16    <b>evidence would suggest that's the case.</b></p> <p>17    Q. Now, if we look at the same place near the</p> <p>18    bottom of the second page of Exhibit 3, it also contains</p> <p>19    the statement, "If there is anything outlined contrary</p> <p>20    to your understanding of our agreement, please notify us</p> <p>21    immediately by facsimile."</p> <p>22    <b>A. I see that. Yes.</b></p> <p>23    Q. And, Mr. Wilson, do you recall that there was</p> <p>24    also an issue about a mistake made on the price term in</p> <p>25    these first two confirms?</p>	<p style="text-align: right;">423</p> <p>1     Isn't that right?</p> <p>2     <b>A. The -- all these confirms are silent on the</b></p> <p>3     <b>issue of origin.</b></p> <p>4     Q. They don't say anything about it?</p> <p>5     <b>A. They don't say anything.</b></p> <p>6     Q. Okay. Did you ever call Mr. Leyman to</p> <p>7     say, "Hey, this doesn't say that it has to be U.S.</p> <p>8     origin"?</p> <p>9     <b>A. At some point I did call Mr. Leyman and tell</b></p> <p>10    <b>him that.</b></p> <p>11    Q. Okay. But you did not do it on July 22nd?</p> <p>12    MR. BERGESON: Objection.</p> <p>13    Q. (BY MR. DIAZ-ARRASTIA) You didn't do that on</p> <p>14    July 22nd, did you, sir?</p> <p>15    <b>A. No.</b></p> <p>16    Q. And you didn't do it on July 23rd?</p> <p>17    <b>A. No.</b></p> <p>18    Q. You didn't do it until July 31st. Right, sir?</p> <p>19    <b>A. This was a delay. That's right.</b></p> <p>20    Q. And on July 22nd, you told Mr. Leyman you</p> <p>21    wanted the payment terms changed?</p> <p>22    <b>A. That's right.</b></p> <p>23    Q. You did do that. Correct, sir?</p> <p>24    <b>A. That's right.</b></p> <p>25    Q. And there was also a change in the price term,</p>

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<p style="text-align: right;">424</p> <p>1 an amendment. Correct, sir?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. During all these iterations of Exhibits 2, 3</p> <p>4 and 4, you never said, "Hey, U.S. origin is not part of</p> <p>5 the terms of this deal that's written out"?</p> <p>6 <b>A. I never objected to a term that wasn't</b></p> <p>7 <b>included on these confirms. It was -- in retrospect, I</b></p> <p>8 <b>should have, but it was MOAB's mistake, not mine.</b></p> <p>9 Q. Is it your belief that on July 22nd, 2008, you</p> <p>10 did buy MX from Tricon, you meaning in your capacity as</p> <p>11 the representative of Vinmar?</p> <p>12 I'm just asking --</p> <p>13 MR. BERGESON: I understand.</p> <p>14 Q. (BY MR. DIAZ-ARRASTIA) -- what your</p> <p>15 understanding is.</p> <p>16 <b>A. I do not believe there was ever a deal with</b></p> <p>17 <b>Tricon. We never agreed on the terms. I required U.S.</b></p> <p>18 <b>origin. Tricon didn't want U.S. origin. There was</b></p> <p>19 <b>never an agreement.</b></p> <p>20 Q. If you could take a look at Exhibit 39 from</p> <p>21 this stack, sir. And you talked about this with Mr. Lee</p> <p>22 about the middle of the page your writing to</p> <p>23 Mr. Nicholas Smith, you say, "I bought CFR so I don't</p> <p>24 need to arrange shipping."</p> <p>25 <b>A. That's right.</b></p>	<p style="text-align: right;">426</p> <p>1 that you received from Mr. Lockwood that's dated</p> <p>2 July 22nd. Correct, sir?</p> <p>3 <b>A. I don't remember if this was attached.</b></p> <p>4 Q. Do you remember receiving the letter from</p> <p>5 Mr. Lockwood?</p> <p>6 <b>A. I don't remember, no.</b></p> <p>7 Q. I think Mr. Pascu's job at Vinmar was a supply</p> <p>8 chain specialist. Is that correct?</p> <p>9 <b>A. It's one way you could describe his work, yes.</b></p> <p>10 Q. What is the job of a supply chain specialist?</p> <p>11 <b>A. He is -- his role is to make sure that the</b></p> <p>12 <b>terms of the agreement -- that the terms of the</b></p> <p>13 <b>agreement are consistent with what we've agreed to.</b></p> <p>14 Q. Okay. Once a trader makes a deal, is it the</p> <p>15 job of the supply chain specialist to complete the</p> <p>16 transaction?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And this frees the trader to do more deals.</p> <p>19 Correct?</p> <p>20 <b>A. That's right.</b></p> <p>21 Q. Okay. The trader's job is to make deals and</p> <p>22 the supply chain specialist, or whatever you want to</p> <p>23 call that person, their job is to complete the</p> <p>24 transaction. Is that correct, sir?</p> <p>25 <b>A. Well, that's a -- there's many elements of</b></p>
<p style="text-align: right;">425</p> <p>1 Q. When you say you bought CFR, you're referring</p> <p>2 to the Tricon transaction. Correct?</p> <p>3 <b>A. That's right.</b></p> <p>4 Q. So you're telling Mr. Smith that you bought MX</p> <p>5 from Tricon. Correct, sir?</p> <p>6 <b>A. That's what I told them, yes.</b></p> <p>7 Q. I'm going to show you now what's been</p> <p>8 previously marked as Exhibit 29. Do you recognize that</p> <p>9 document, sir?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Okay. Well, it appears to be an e-mail that</p> <p>12 you're sending to Laurentiu Pascu.</p> <p>13 <b>A. That's right.</b></p> <p>14 Q. And you've already talked about Mr. Pascu. He</p> <p>15 worked with you at Vinmar. Correct?</p> <p>16 <b>A. That's correct.</b></p> <p>17 Q. Okay. And it is dated on July 24th, 2008, at</p> <p>18 10:15. Correct?</p> <p>19 <b>A. That's correct.</b></p> <p>20 Q. And you tell Mr. Pascu, "Laurentiu, I bought</p> <p>21 MX from Tricon. Please make -- please contact them and</p> <p>22 make the necessary arrangements. Rick." Did I read</p> <p>23 that correctly, sir?</p> <p>24 <b>A. That's correct.</b></p> <p>25 Q. And you're attaching to Mr. Pascu a letter</p>	<p style="text-align: right;">427</p> <p>1 <b>completing a transaction. Clearly they're not engaged</b></p> <p>2 <b>in shipping or chartering but all the financial and</b></p> <p>3 <b>contractual agreements, you know, it's their</b></p> <p>4 <b>responsibility to execute them.</b></p> <p>5 Q. They complete the financial and contractual</p> <p>6 agreements?</p> <p>7 <b>A. That's right. Where they enter them into the</b></p> <p>8 <b>system, right.</b></p> <p>9 Q. Let me now show you what's been previously</p> <p>10 marked as Exhibit 15, and if I could call your attention</p> <p>11 to the bottom of the page. It's an e-mail from Brad</p> <p>12 Lockwood to you dated July 23, 2008, at 10:57 in the</p> <p>13 morning.</p> <p>14 <b>A. Uh-huh.</b></p> <p>15 Q. And Mr. Brad Lockwood says, "Rick, I am</p> <p>16 pleased to attach a copy of our sales contract to you</p> <p>17 for the mixed xylenes."</p> <p>18 <b>A. That's right.</b></p> <p>19 Q. And if you would look at the second page of</p> <p>20 Exhibit No. 15, it appears to be the same letter that</p> <p>21 was in Exhibit 29. Is that correct?</p> <p>22 <b>A. I'm not sure. Okay. They appear to be the</b></p> <p>23 <b>same.</b></p> <p>24 Q. Does this refresh your recollection about</p> <p>25 receiving Mr. Lockwood's July 22, 2008, letter?</p>

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<p style="text-align: right;">428</p> <p>1       <b>A. I remember seeing this contract before.</b></p> <p>2       Q. Does this refresh your recollection that</p> <p>3       Mr. Lockwood sent it to you on July 23rd, 2008?</p> <p>4       <b>A. That's the time stamp on this, that's correct.</b></p> <p>5       Q. And Exhibit 29 indicates that you forwarded it</p> <p>6       to Mr. Pascu on July 24th at 10:15 a.m.?</p> <p>7       <b>A. Again, I don't remember forwarding it, but I</b></p> <p>8       <b>believe its accurate.</b></p> <p>9       Q. Sir, if you would, take a look at Exhibit 15,</p> <p>10       which is the last one that we were talking about.</p> <p>11       <b>A. Okay.</b></p> <p>12       Q. And the second page, I think it's the one you</p> <p>13       have in front of you.</p> <p>14       <b>A. Yeah.</b></p> <p>15       Q. And if you would then pull out Exhibit 4 and</p> <p>16       look at the second page of that.</p> <p>17       <b>A. Okay.</b></p> <p>18       Q. And I would like to compare the two on some of</p> <p>19       the essential terms of the deal. First, you see where</p> <p>20       it says "Product" on Exhibit 15?</p> <p>21       <b>A. Yep.</b></p> <p>22       Q. And it says "Mixed xylenes." Correct?</p> <p>23       <b>A. That's correct.</b></p> <p>24       Q. And it says -- and that is the same as what it</p> <p>25       says on Exhibit 4. Correct?</p>	<p style="text-align: right;">430</p> <p>1       Q. It's the same?</p> <p>2       <b>A. Yes.</b></p> <p>3       Q. On delivery in Exhibit 15, there is a line</p> <p>4       that says "Incoterm." That says, "CFR Ulsan/Taiwan."</p> <p>5       You understand that to be referring to the delivery.</p> <p>6       Correct?</p> <p>7       <b>A. That's correct.</b></p> <p>8       Q. And the delivery on Exhibit 4 says, "CFR basis</p> <p>9       Taiwan or Ulsan Korea." Correct, sir?</p> <p>10       <b>A. That's right.</b></p> <p>11       Q. In -- in Exhibit 15 there's a line that says,</p> <p>12       "Ship period, September 1, 2008, to September 15, 2008,"</p> <p>13       correct, sir, on Exhibit 15?</p> <p>14       <b>A. Yes.</b></p> <p>15       Q. Okay. And if you look under the delivery</p> <p>16       terms in Exhibit 4, second line -- starting from the end</p> <p>17       of the first line, second line, it says, "At buyer's</p> <p>18       option via barge/vessel provided seller 9-1-2008 to</p> <p>19       9-15-2008, seller's option." Correct?</p> <p>20       <b>A. That's correct.</b></p> <p>21       Q. They're the same again?</p> <p>22       <b>A. Uh-huh.</b></p> <p>23       Q. So all of these terms that we have talked --</p> <p>24       and -- excuse me.</p> <p>25       Finally, if you'll look at the payment</p>
<p style="text-align: right;">429</p> <p>1       <b>A. That's correct.</b></p> <p>2       Q. Let's look where it says "Quantity" on</p> <p>3       Exhibit 15. And it says, "5,000 metric tons plus or</p> <p>4       minus 5 percent." Correct, sir?</p> <p>5       <b>A. That's right.</b></p> <p>6       Q. And quantity on Exhibit 4 also says, "5,000</p> <p>7       metric tons plus or minus 5 percent." So they're the</p> <p>8       same?</p> <p>9       <b>A. Yes.</b></p> <p>10       Q. Let's go to the next. Quality is the next one</p> <p>11       on Exhibit 15. And it says, "ASTM D-5211 with BL max</p> <p>12       20." Correct?</p> <p>13       <b>A. That's correct.</b></p> <p>14       Q. And over on Exhibit 4, you have to skip a</p> <p>15       line. There's also a quality line and it says, "Mixed</p> <p>16       xylenes meeting ASTM D-5211, latest revisions with 52</p> <p>17       maximum bromide index," which is the same thing.</p> <p>18       Correct?</p> <p>19       <b>A. That's right.</b></p> <p>20       Q. Price on Exhibit 15, it says, "USD 1310.00 per</p> <p>21       metric ton." Correct, sir?</p> <p>22       <b>A. That's right.</b></p> <p>23       Q. And on Exhibit 4 price, that's the same,</p> <p>24       "USD 1310 per metric ton, CFR basis." Correct, sir?</p> <p>25       <b>A. I don't see CFR basis. Oh, yeah, I do. Yes.</b></p>	<p style="text-align: right;">431</p> <p>1       term and credit terms, they both talk about a payment by</p> <p>2       an on site letter of credit. Correct, sir?</p> <p>3       <b>A. That's correct.</b></p> <p>4       Q. So those -- all of these terms that we have</p> <p>5       discussed are the same in Exhibit 15 and in Exhibit 4?</p> <p>6       <b>A. That's correct.</b></p> <p>7       Q. Okay. And Exhibit 15, Mr. Lockwood's letter,</p> <p>8       again, does not say anything about the origin of the</p> <p>9       material?</p> <p>10       <b>A. It does not.</b></p> <p>11       Q. Although Exhibit 15 contains terms that are</p> <p>12       not included in Exhibit 4, it doesn't contain any terms</p> <p>13       that are different from the ones on Exhibit 4. Is that</p> <p>14       correct, sir?</p> <p>15       Is that right?</p> <p>16       <b>A. There is nothing on the confirm that is not</b></p> <p>17       <b>included in the contract, that's correct.</b></p> <p>18       Q. And Exhibit 15 has more terms than the</p> <p>19       confirm?</p> <p>20       <b>A. That's right.</b></p> <p>21       Q. But nothing in the -- Exhibit 15 contradicts</p> <p>22       something that's in the confirm. Isn't that right, sir?</p> <p>23       <b>A. Say that again.</b></p> <p>24       Q. Nothing that -- nothing that is in Exhibit 15</p> <p>25       contradicts a term that's stated on Exhibit 4?</p>



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<p style="text-align: right;">432</p> <p>1       <b>A. No, except that there's additional terms.</b></p> <p>2       Q. Okay. If you would take a look at Exhibit 31,</p> <p>3       sir. We looked at that earlier.</p> <p>4       (Playback of videotaped was stopped at</p> <p>5       this time.)</p> <p>6       MR. LEE: Stop there.</p> <p>7       JUDGE BENTON: Why don't you stop? Let's</p> <p>8       go ahead and stop it and we'll go to lunch.</p> <p>9       MR. DIAZ-ARRASTIA: I think this is a good</p> <p>10      place to break.</p> <p>11      JUDGE BENTON: We'll break for lunch until</p> <p>12      about 1:00 o'clock. We're at lunch. We're off the</p> <p>13      record.</p> <p>14      (Recess from 11:56 a.m. to 1:03 p.m.)</p> <p>15      JUDGE BENTON: We're back on the record.</p> <p>16      And we'll -- let's see. We have about an hour -- about</p> <p>17      45 minutes left. Right?</p> <p>18      MR. RUNIONS: That's what I've got, about</p> <p>19      45 minutes.</p> <p>20      Let's pick up with the deposition</p> <p>21      testimony.</p> <p>22      (Playback of videotape was started again</p> <p>23      at this time.)</p> <p>24      Q. (BY MR. DIAZ-ARRASTIA) If you would take a</p> <p>25      look at Exhibit 31, sir. We looked at that earlier.</p>	<p style="text-align: right;">434</p> <p>1       order. Correct, sir?</p> <p>2       <b>A. That's right.</b></p> <p>3       Q. And then you respond to him a few minutes</p> <p>4       later saying, "There is also a .5 per -- I guess that's</p> <p>5       MT -- broker charge." Right, sir?</p> <p>6       <b>A. That's correct.</b></p> <p>7       Q. And you say, "And I may not sell it in</p> <p>8       Taiwan"?</p> <p>9       <b>A. That's right.</b></p> <p>10      Q. And that's because you already knew at the</p> <p>11      sale that you had in your mind you had lost. Correct,</p> <p>12      sir?</p> <p>13      <b>A. That's right.</b></p> <p>14      Q. And then you say in your last line,</p> <p>15      "Otherwise, it's fine." Do you see that, sir?</p> <p>16      <b>A. Yeah.</b></p> <p>17      Q. Okay. And -- well, what I'm trying to</p> <p>18      understand, sir, is when you say, "Otherwise, it's</p> <p>19      fine," are you saying that the purchase order that</p> <p>20      Mr. Anaya prepared is fine other than the --</p> <p>21      <b>A. I don't remember the details of what I was</b></p> <p>22      <b>thinking at the time. I'm sorry.</b></p> <p>23      Q. Before you wrote the e-mail at the top of</p> <p>24      Exhibit 31, had you seen the purchase order that</p> <p>25      Mr. Anaya had prepared?</p>
<p style="text-align: right;">433</p> <p>1       It's your e-mail chain with Mr. Anaya.</p> <p>2       <b>A. 31 did you say?</b></p> <p>3       Q. 31, yes, sir.</p> <p>4       <b>A. All right.</b></p> <p>5       Q. And on July 24th, Mr. Anaya tells you, "To</p> <p>6       complete the order, we just need the port of origin for</p> <p>7       this product."</p> <p>8       Do you remember talking about that with</p> <p>9       Mr. Lee?</p> <p>10      <b>A. That's right.</b></p> <p>11      Q. And your response was, "Re: Origin, we won't</p> <p>12      know until we declare discharge port. Most likely USG,"</p> <p>13      meaning U.S. Gulf?</p> <p>14      <b>A. That's correct.</b></p> <p>15      Q. Okay. And you understand that most likely</p> <p>16      doesn't mean a guarantee?</p> <p>17      <b>A. I didn't need a guarantee from the U.S. Gulf.</b></p> <p>18      <b>I needed a guarantee from the USA.</b></p> <p>19      Q. Sir, my question to you was, in your mind, if</p> <p>20      something says, "Something is most likely of a certain</p> <p>21      origin," that is different from saying, "It's guaranteed</p> <p>22      to be of that origin." Would you agree me about that?</p> <p>23      <b>A. That's correct.</b></p> <p>24      Q. And Mr. Anaya responds to you saying, "Okay.</p> <p>25      That is what we wrote on the PO," meaning purchase</p>	<p style="text-align: right;">435</p> <p>1       <b>A. I don't remember seeing it.</b></p> <p>2       Q. Okay. Mr. Wilson, I am showing you what's</p> <p>3       been previously marked as Exhibit 34. Is that the</p> <p>4       purchase order that was prepared for the Tricon deal at</p> <p>5       Vinmar?</p> <p>6       <b>A. I don't remember it, no.</b></p> <p>7       Q. You don't know if you had seen that before you</p> <p>8       replied to Mr. Anaya, "Otherwise, it's fine"?</p> <p>9       <b>A. I just don't remember reviewing it. I'm</b></p> <p>10      <b>sorry.</b></p> <p>11      Q. Is this the standard purchase order form that</p> <p>12      Vinmar used around July 24th, 2008?</p> <p>13      <b>A. I can't comment on if every line here is</b></p> <p>14      <b>consistent, which usually is.</b></p> <p>15      Q. I'm sorry. I didn't hear the last part of</p> <p>16      your answer.</p> <p>17      <b>A. I'm sorry that you couldn't hear me. My point</b></p> <p>18      <b>was that I can't comment and I can't say without doubt</b></p> <p>19      <b>that every -- every term that is typically on a purchase</b></p> <p>20      <b>order from Vinmar is on this specific example.</b></p> <p>21      Q. Okay. I understand. It was not your job as a</p> <p>22      trader to prepare purchase orders?</p> <p>23      <b>A. That's right.</b></p> <p>24      Q. That was either Mr. Anaya or Mr. Pascu's job?</p> <p>25      <b>A. That's right.</b></p>

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<p style="text-align: right;">436</p> <p>1 Q. They took care of that part of the</p> <p>2 transaction?</p> <p>3 A. <b>That's right.</b></p> <p>4 Q. If you would take a look at the second page of</p> <p>5 Exhibit 34, sir. That's the one we were just looking at</p> <p>6 right there. You see near the top where there's a place</p> <p>7 for origin?</p> <p>8 A. <b>That's right.</b></p> <p>9 Q. Okay. And it's left blank?</p> <p>10 A. <b>That's right.</b></p> <p>11 Q. And if you'll look at the bottom of the second</p> <p>12 page, do you see where it says, "Law and arbitration"?</p> <p>13 A. <b>Yes, I see that.</b></p> <p>14 Q. Now, it says, "Law of the state of Texas, USA,</p> <p>15 to apply. All disputes arising in connection with the</p> <p>16 present contract shall be finally settled under the</p> <p>17 rules of conciliation and arbitration of the American</p> <p>18 Arbitration Association by one or more arbitrators</p> <p>19 appointed in accordance with the said rules." Did I</p> <p>20 read that correctly, sir?</p> <p>21 A. <b>You did read that correctly.</b></p> <p>22 Q. Okay. Is that law and arbitration provision</p> <p>23 one that was contained in the purchase orders that</p> <p>24 Vinmar was using on or around July 2008?</p> <p>25 A. <b>I don't remember.</b></p>	<p style="text-align: right;">438</p> <p>1 A. <b>I can't confirm that. May be.</b></p> <p>2 Q. And at the bottom of the text of this e-mail,</p> <p>3 Mr. Pascu says, "If you have a right contact person</p> <p>4 would be great. I can make contacts and discuss that."</p> <p>5 Do you see that, sir?</p> <p>6 A. <b>Yes, I see that.</b></p> <p>7 Q. And, Mr. Wilson, Exhibit 36 was July 29th,</p> <p>8 2008, at 11:54 a.m. Correct?</p> <p>9 A. <b>That's correct.</b></p> <p>10 Q. And the document we have just marked</p> <p>11 Exhibit 41 is an e-mail from you to Mr. Pascu on</p> <p>12 July 29th, 2008, at 11:59 a.m., just a few minutes</p> <p>13 later. Correct?</p> <p>14 A. <b>That's correct.</b></p> <p>15 Q. And essentially you tell him, "Laurentiu, the</p> <p>16 contact is Vuk Rajevac."</p> <p>17 A. <b>That's correct.</b></p> <p>18 Q. And you gave him his e-mail address and</p> <p>19 cellphone number. Correct, sir?</p> <p>20 A. <b>That's what's in the e-mail, yes.</b></p> <p>21 Q. Okay. If you would take a look at Exhibit 15,</p> <p>22 again, sir, the first page of that exhibit. In</p> <p>23 Mr. Lockwood's e-mail to you at the bottom of that first</p> <p>24 page, in the second sentence, he tells you, "Please let</p> <p>25 Vuk know the contact details for your logistics</p>
<p style="text-align: right;">437</p> <p>1 Q. Again, that's because that's not your job,</p> <p>2 it's Mr. Pascu's and Mr. Anaya's job?</p> <p>3 A. <b>I just don't remember.</b></p> <p>4 Q. But dealing with that part of the transaction</p> <p>5 was not your job as the trader; it was the job of</p> <p>6 Mr. Anaya or Mr. Pascu as the specialists?</p> <p>7 A. <b>I don't remember the detailed roles and</b></p> <p>8 <b>responsibility. I'm sorry.</b></p> <p>9 Q. Dr. Wilson, let me show you what was</p> <p>10 previously marked as Exhibit 36. And this is an e-mail</p> <p>11 from Mr. Pascu to you dated July 29th, 2008?</p> <p>12 A. <b>Yes, sir. I've read it.</b></p> <p>13 Q. Well, that's what it is. It's an e-mail from</p> <p>14 Mr. Pascu to you dated July 29th, 2008?</p> <p>15 A. <b>That's correct.</b></p> <p>16 Q. And Mr. Pascu says, "Rick, please find my</p> <p>17 comments on this sales contract." Do you understand</p> <p>18 that to be a reference to Exhibit 15, the letter from</p> <p>19 Mr. Lockwood to you? Let me repeat my question.</p> <p>20 A. <b>Yeah. Could you, please?</b></p> <p>21 Q. My question was, is it your understanding,</p> <p>22 sir, that when Mr. Pascu says, "Please find my comments</p> <p>23 on this sales contract," Mr. Pascu is referring to</p> <p>24 Exhibit 15, the letter from Mr. Lockwood to you with the</p> <p>25 additional terms?</p>	<p style="text-align: right;">439</p> <p>1 colleague." Do you understand that Vuk means Vuk</p> <p>2 Rajevac?</p> <p>3 A. <b>Do I understand now? Yes. I don't -- I'm not</b></p> <p>4 <b>sure I understand at that time.</b></p> <p>5 Q. Well, how did you know to tell Mr. Pascu that</p> <p>6 the contact person he needed to get ahold of us was Vuk</p> <p>7 Rajevac?</p> <p>8 A. <b>I don't remember.</b></p> <p>9 Q. All right. Mr. Lockwood had to have told you.</p> <p>10 Right?</p> <p>11 A. <b>I don't remember.</b></p> <p>12 Q. Let me bring your attention now, sir, to what</p> <p>13 has been previously been marked as Exhibit 35. And if</p> <p>14 you'll look at the bottom half of the first page of</p> <p>15 Exhibit 35, it appears to be an e-mail from Mr. Pascu to</p> <p>16 Mr. Rajevac dated July 29th, 2008, at 4:08 in the</p> <p>17 afternoon. Is that correct, sir?</p> <p>18 A. <b>That's correct.</b></p> <p>19 Q. Okay. And Mr. Pascu says, "Please enclose our</p> <p>20 comments on your sale confirmation. We shall revert</p> <p>21 soon with our purchase order for your review." Did I</p> <p>22 read that correctly?</p> <p>23 A. <b>You did.</b></p> <p>24 Q. Okay. And the purchase order that he's</p> <p>25 referring to would be what we saw as Exhibit 34?</p>

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<p style="text-align: right;">440</p> <p>1 A. Maybe.</p> <p>2 Q. You don't get involved with purchase orders?</p> <p>3 A. No. I think that -- I don't remember the</p> <p>4 details of what happened over two years ago.</p> <p>5 Q. Okay. If you will look over on the third page</p> <p>6 of Exhibit 35, sir. And this appears to be a copy of</p> <p>7 Mr. Lockwood's letter like what we have on Exhibit 15</p> <p>8 except that there's some handwriting on it. Do you see</p> <p>9 that, sir?</p> <p>10 A. That's correct.</p> <p>11 Q. Is that Mr. Raj -- Mr. Pascu's handwriting?</p> <p>12 A. I don't know.</p> <p>13 Q. If you would look at the top right-hand</p> <p>14 corner, there's a number handwritten in there.</p> <p>15 A. That's correct.</p> <p>16 Q. Do you see that it's 4529980?</p> <p>17 A. That's correct.</p> <p>18 Q. If you will take a look at Exhibit 34, sir.</p> <p>19 That's the purchase order.</p> <p>20 A. Okay.</p> <p>21 Q. There's a purchase order number on Exhibit 34.</p> <p>22 Correct, sir?</p> <p>23 A. That's right.</p> <p>24 Q. And that's also 4529980. Correct, sir?</p> <p>25 A. 452 -- that's correct.</p>	<p style="text-align: right;">442</p> <p>1 that's right.</p> <p>2 Q. So "and confirmed" is scratched out?</p> <p>3 A. That's right.</p> <p>4 Q. Take a look at Exhibit 36 again, Mr. Pascu's</p> <p>5 e-mail to you. And if you will look -- I think it's the</p> <p>6 second sentence. He says, "Also, we do not have to open</p> <p>7 a confirmed LC." Do you see where he says that?</p> <p>8 A. Yes.</p> <p>9 Q. And that's making a reference to scratching</p> <p>10 out "and confirmed." Correct?</p> <p>11 A. It would appear to be the case.</p> <p>12 Q. Okay. And that's the sort of thing that</p> <p>13 Mr. Pascu would take care of; that's part of his job?</p> <p>14 A. Yes.</p> <p>15 Q. If you will look at the next page on</p> <p>16 Exhibit 35. It's VIN No. 6, 00006.</p> <p>17 A. 6. All right. Five, six. Yeah.</p> <p>18 Q. Okay. Do you see under Demurrage, Mr. Rajevac</p> <p>19 wants to change the demurrage time bar. Correct?</p> <p>20 A. Right.</p> <p>21 Q. Yes, sir?</p> <p>22 A. That's what it says.</p> <p>23 Q. And that's also part of what mister -- I said</p> <p>24 Mr. Rajevac. Mr. Pascu says that he wants to change the</p> <p>25 demurrage time bar. Correct?</p>
<p style="text-align: right;">441</p> <p>1 Q. Okay. So this handwritten number appears to</p> <p>2 be a reference to the Vinmar purchase order. Will you</p> <p>3 agree with that?</p> <p>4 A. It does.</p> <p>5 Q. I'm sorry. Did Mr. Pascu discuss with you his</p> <p>6 comments before he sent them to Mr. Rajevac?</p> <p>7 A. I don't remember.</p> <p>8 Q. Well, did you see this document with the</p> <p>9 handwritten notes --</p> <p>10 A. On what date?</p> <p>11 Q. -- before Mr. Pascu forwarded it to</p> <p>12 Mr. Rajevac?</p> <p>13 A. I don't remember.</p> <p>14 Q. Some of the changes that are made in</p> <p>15 handwriting on Exhibit 34 -- for example, where you see</p> <p>16 the credit terms, there is something scratched out. Do</p> <p>17 you see that, sir?</p> <p>18 A. That's right.</p> <p>19 Q. And what's scratched out I think is where he</p> <p>20 says, "Irrevocable and confirmed." He scratched out</p> <p>21 "and confirmed"?</p> <p>22 A. I can't even read this but --</p> <p>23 Q. Let's take a look at Exhibit 15, which is</p> <p>24 clearer, the second page of Exhibit 15.</p> <p>25 A. "Irrevocable and confirmed" document, I see</p>	<p style="text-align: right;">443</p> <p>1 A. That's apparently the case.</p> <p>2 Q. And that's also part of Mr. Pascu's job?</p> <p>3 A. That's correct.</p> <p>4 Q. Otherwise, would Mr. Pascu have the authority</p> <p>5 to go forward and complete the transaction as part of</p> <p>6 his job?</p> <p>7 A. He can't change the terms, no.</p> <p>8 Q. But he can negotiate things like not needing a</p> <p>9 confirmed letter of credit?</p> <p>10 A. He would have to propose it and -- you know, a</p> <p>11 demurrage letters of credit are commercial terms. He</p> <p>12 would normally bring those to my attention.</p> <p>13 Q. Okay. And do you think he did in this case?</p> <p>14 A. And I think he did or didn't?</p> <p>15 Q. Do you think he did in this case?</p> <p>16 A. I don't remember him doing, it, no.</p> <p>17 Q. In looking again at Exhibit 35, none of the</p> <p>18 handwritten notations on Mr. Lockwood's letter say</p> <p>19 anything about origin of the material. Correct?</p> <p>20 A. And which page is that? It's exhibit --</p> <p>21 Q. Exhibit 35.</p> <p>22 A. 35.</p> <p>23 Q. We have a part where we have handwritten</p> <p>24 notations on Mr. Lockwood's July 22nd letter.</p> <p>25 A. Okay.</p>

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<p style="text-align: right;">444</p> <p>1 Q. None of those handwritten notations relate to</p> <p>2 the origin of the material?</p> <p>3 A. No.</p> <p>4 Q. And, similarly, in the cover e-mail from</p> <p>5 Mr. Pascu to Mr. Rajevac, there's no mention of origin</p> <p>6 on the material either?</p> <p>7 A. That's correct. But as a point of</p> <p>8 clarification, this deal -- they would not have notified</p> <p>9 the port of origin because they wanted us to nominate a</p> <p>10 discharge port and time first so you wouldn't have that</p> <p>11 information on these contracts at this point.</p> <p>12 Q. Is it your testimony, sir, that if U.S. origin</p> <p>13 was an essential term of the deal that you wanted to</p> <p>14 make, it would not be mentioned in any of the</p> <p>15 documentation?</p> <p>16 A. My point is that if it was open origin it</p> <p>17 would have been in the contract. It was not.</p> <p>18 Q. Your testimony is that if you make a deal</p> <p>19 where the origin of the material from the United States</p> <p>20 is an essential term of what you wanted, it would be a</p> <p>21 normal thing for you to see no mention of that in any of</p> <p>22 the paperwork? Is that your testimony?</p> <p>23 A. My testimony is once the origin has been</p> <p>24 determined, the specific port, not the origin, the</p> <p>25 specific port, it will on the contract and it will be in</p>	<p style="text-align: right;">446</p> <p>1 That's just a little over 30 minutes after Mr. Pascu's</p> <p>2 July 29, 2008, 4:08 p.m. e-mail that was in Exhibit 35?</p> <p>3 A. It is.</p> <p>4 Q. Did you see this e-mail on July 29th?</p> <p>5 A. I don't remember exactly.</p> <p>6 Q. Is this something that would have been part of</p> <p>7 Mr. Pascu's job to take care of?</p> <p>8 A. I think it would have been Mr. Pascu's</p> <p>9 responsibility to bring up any issues he saw as a result</p> <p>10 of this communication --</p> <p>11 Q. Okay.</p> <p>12 A. -- which I believe he did.</p> <p>13 Q. And it says -- on No. 1, Mr. Rajevac tells</p> <p>14 Mr. Pascu, "Your comments on the contract are well noted</p> <p>15 and accepted except for demurrage time bar, which is</p> <p>16 90 days as per industry standard." Correct, sir?</p> <p>17 A. That's what it says.</p> <p>18 Q. Let's go back to Exhibit 37. Near the bottom</p> <p>19 of that page in Mr. Rajevac's e-mail under Point No. 3</p> <p>20 on the first page, Mr. Rajevac says, "As far as the</p> <p>21 shipment details, we sold on CFR basis with arrival</p> <p>22 window. So once you declare the discharge port by</p> <p>23 August 8, we will be able to decide whether to give you</p> <p>24 a deep sea cargo, which at that point will most likely</p> <p>25 be in the water, or an Asian origin cargo." Did I read</p>
<p style="text-align: right;">445</p> <p>1 the purchase order system.</p> <p>2 Q. But your testimony is that if you believed</p> <p>3 origin from the U.S. was essential to what you wanted,</p> <p>4 it would be a normal thing for you to see no mention of</p> <p>5 it in any of your paperwork. Is that what you believe?</p> <p>6 A. I believe the communications were silent on</p> <p>7 origin and I expected that once the exact port has been</p> <p>8 identified that they would appear on the contract.</p> <p>9 So in retrospect, you know, it's easy to</p> <p>10 see that had I gone back in time I didn't catch it, and</p> <p>11 that was my mistake. It's actually Tricon's mistake,</p> <p>12 but I didn't catch it. And -- but that doesn't change</p> <p>13 the fact that I never asked for non-U.S. material. I</p> <p>14 never gave Ed Leyman the authority to purchase non-U.S.</p> <p>15 material.</p> <p>16 Q. Let's take a look at exhibit -- what's been</p> <p>17 previously marked as Exhibit 37. And the bottom is an</p> <p>18 e-mail from Mr. Rajevac to Mr. Pascu dated July 29th,</p> <p>19 2008, at 4:43. Correct?</p> <p>20 A. That's right.</p> <p>21 Q. And that is, oh, just a little -- just a</p> <p>22 little over 30 minutes after Mr. Pascu's e-mail to him</p> <p>23 that was in Exhibit 35. Correct?</p> <p>24 A. Say that again. I'm sorry.</p> <p>25 Q. Exhibit 37 is dated July 29th, 2008, at 4:43.</p>	<p style="text-align: right;">447</p> <p>1 that correctly, sir?</p> <p>2 A. That's what I see.</p> <p>3 Q. And it is not uncommon to sell cargo that's</p> <p>4 already in the water. Correct?</p> <p>5 A. It's not uncommon.</p> <p>6 Q. And that's what he means by a deep sea cargo?</p> <p>7 A. That's right.</p> <p>8 Q. But certainly, sir, this is a clear statement</p> <p>9 on Mr. Rajevac's part that they may -- would not</p> <p>10 necessarily give you U.S. origin material. Correct?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Did Mr. Pascu inform you of this when he got</p> <p>13 it?</p> <p>14 A. At some point I -- it was brought to my</p> <p>15 attention. And it appears here that Laurentiu forwarded</p> <p>16 this to me on July 31st because there was some period of</p> <p>17 discovery. I just don't remember the details.</p> <p>18 Q. Do you recall telling Mr. Pascu that you had</p> <p>19 to have U.S. origin before July 29th?</p> <p>20 A. Yes.</p> <p>21 Q. Mister -- Dr. Wilson, calling your attention</p> <p>22 to Exhibit 42, that appears to be a series of instant</p> <p>23 messages between you and Brad Lockwood?</p> <p>24 A. Appears to be.</p> <p>25 Q. Okay. And in this set of instant messages,</p>



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<p style="text-align: right;">448</p> <p>1 you're asking Mr. Lockwood whether Tricon would be</p> <p>2 interested in buying back the MX that Vinmar had bought.</p> <p>3 Correct?</p> <p>4 <b>A. I don't remember if that's what it was about.</b></p> <p>5 Q. Okay. Well, take a look at the last entry</p> <p>6 from Rick Wilson at the bottom, which is the next from</p> <p>7 the last. It says, "RickWilson@sbcglobal.net,</p> <p>8 7-31-2008, 9:41:27 a.m."</p> <p>9 And it said, "Brad, if you want to wipe</p> <p>10 the slate clean, we can do that. Otherwise, I have</p> <p>11 contract obligations. I supply info." Did I read that</p> <p>12 correctly, sir?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. So when you say, "wipe the slate</p> <p>15 clean," that means buy back what you sold me. Correct?</p> <p>16 <b>A. I don't know that that's what this was in</b></p> <p>17 <b>reference to --</b></p> <p>18 Q. What --</p> <p>19 <b>A. -- in essence so --</b></p> <p>20 Q. What does "wipe the slate clean" mean when you</p> <p>21 said that?</p> <p>22 <b>A. I don't remember.</b></p> <p>23 Q. Now, you state that you have other contractual</p> <p>24 obligations that you can use the material to satisfy.</p> <p>25 Correct?</p>	<p style="text-align: right;">450</p> <p>1 <b>A. I don't remember.</b></p> <p>2 Q. Do you remember telling Mr. Lockwood before</p> <p>3 July 31st at 1:43 p.m. that the material had to be from</p> <p>4 the USA?</p> <p>5 <b>A. I don't remember.</b></p> <p>6 Q. And that is at 1:43 p.m., several hours after</p> <p>7 you had offered to buy the material back and told</p> <p>8 Mr. Lockwood that you had other obligations you could</p> <p>9 fulfill. Correct?</p> <p>10 <b>A. I don't know if this IM is in relation --</b></p> <p>11 <b>necessarily in relation to this refusal.</b></p> <p>12 Q. I'll show you now, Dr. Wilson, what's</p> <p>13 previously marked as Exhibit No. 12. If you would take</p> <p>14 a look a few pages in to the page marked TRI 00045, near</p> <p>15 the bottom of the page.</p> <p>16 It appears to be communications between</p> <p>17 Mr. Leyman and Mr. Lockwood by instant message?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. If you will look at the first line on the day</p> <p>20 7-23 of 9:28 a.m. 53. It's a communication by</p> <p>21 Mr. Leyman. He says, "No MX or NPX buyers yet. Asia</p> <p>22 got beaten up last night."</p> <p>23 Do you recall that the price for MX and</p> <p>24 NPX in Asia started to fall in the night of July 22nd?</p> <p>25 <b>A. I know it is a historical fact. I don't</b></p>
<p style="text-align: right;">449</p> <p>1 <b>A. That's what this says.</b></p> <p>2 Q. The communication between Mr. Rajevac and</p> <p>3 Mr. Pascu is July 29, isn't it, sir?</p> <p>4 <b>A. That's correct.</b></p> <p>5 Q. Okay. Two days later, you're telling</p> <p>6 Mr. Lockwood that you would buy the material back and</p> <p>7 that you have other contracts you can fulfill?</p> <p>8 <b>A. That's what the IM suggests, yes.</b></p> <p>9 Q. I'll show you now what's previously marked as</p> <p>10 Exhibit 17. And near the bottom of it is an e-mail</p> <p>11 communication from you to Mr. Rajevac. Correct?</p> <p>12 <b>A. That's correct.</b></p> <p>13 Q. Okay. And that is where you say, "Vuk, we</p> <p>14 cannot accept open origin from this -- for this</p> <p>15 material. It must be from the USA"?</p> <p>16 <b>A. That's right.</b></p> <p>17 Q. Is this the first time that you made that</p> <p>18 communication to Mr. Rajevac? Let me put it this way.</p> <p>19 Is this the first --</p> <p>20 <b>A. To Mr. Rajevac I believe this is the first</b></p> <p>21 <b>time I personally communicated that to him.</b></p> <p>22 Q. Okay. And this is also the first time that</p> <p>23 you had communicated to anybody at Tricon -- you</p> <p>24 yourself had communicated to anybody at Tricon that the</p> <p>25 material had to be from the USA?</p>	<p style="text-align: right;">451</p> <p>1 <b>remember if I recognized it at the time.</b></p> <p>2 Q. But it did happen?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And that's what Mr. Leyman means when he says,</p> <p>5 "Asia got beaten up last night"? Well, is that what you</p> <p>6 understand it says?</p> <p>7 <b>A. "Asia got beaten up." That's a term that</b></p> <p>8 <b>would suggest that prices went down but it's not -- it's</b></p> <p>9 <b>not specific in terms of what prices.</b></p> <p>10 Q. Okay. I think you testified earlier that was</p> <p>11 a surprise to you; you actually expected the price of MX</p> <p>12 in Asia to go up?</p> <p>13 <b>A. That's right.</b></p> <p>14 Q. Okay. Dr. Wilson, if I can call your</p> <p>15 attention to Exhibit 43, which appears to be in --</p> <p>16 instant message communications between you and</p> <p>17 Mr. Leyman. Is that what it appears to be?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. On July 31st, 2008, between 9:30 and about</p> <p>20 10:18 in the morning or about 1:00 -- well, beginning at</p> <p>21 9:26:08 a.m. and ending at 1:02 in the afternoon.</p> <p>22 Correct?</p> <p>23 <b>A. That's -- that's correct.</b></p> <p>24 Q. If you will look at the second line at</p> <p>25 9:26:42 a.m., Mr. Leyman is asking you, "Is your 5 KT</p>

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<p style="text-align: right;">452</p> <p>1 CFR 1 H Sept BBLs still available?" Do you see that,</p> <p>2 sir?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Is that referring to the five metric tons</p> <p>5 purchased from Tricon?</p> <p>6 <b>A. I don't know.</b></p> <p>7 Q. Well, at 10:16:43 a.m., you asked Mr. Leyman,</p> <p>8 "Price for 1H September MX." Do you see that, sir?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And he responds, "Seller had indicated 1250</p> <p>11 early this morning."</p> <p>12 Your response is, "I'll wait."</p> <p>13 Then Mr. Leyman says, "What price will you</p> <p>14 be looking for?"</p> <p>15 And your response is, "It would be nice to</p> <p>16 profit."</p> <p>17 Did I read that all correctly, sir?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. Calling your attention now to Exhibit 44,</p> <p>20 Dr. Wilson, this appears to be an e-mail from you to</p> <p>21 Devang Mehta on July 31st at 9:30 -- 2008 at 9:31 p.m.</p> <p>22 Is that correct sir?</p> <p>23 <b>A. Yep.</b></p> <p>24 Q. Who is Devang Mehta?</p> <p>25 <b>A. Devang is in charge of chemicals trading.</b></p>	<p style="text-align: right;">454</p> <p>1 <b>A. That's correct.</b></p> <p>2 Q. And the statement that appears on the last two</p> <p>3 lines of Exhibit 44 is just a quotation from that</p> <p>4 e-mail?</p> <p>5 <b>A. I believe that was the intent.</b></p> <p>6 Q. Okay. And if you would look at the first</p> <p>7 written time, 7:22. You say, "Devang, here is a summary</p> <p>8 of the communications with Tricon I had -- here is a</p> <p>9 summary of the communications with Tricon that I had</p> <p>10 had."</p> <p>11 On the first line it says, "7:22." Do you</p> <p>12 see that, sir?</p> <p>13 <b>A. Uh-huh.</b></p> <p>14 Q. And is -- and that's a "yes"?</p> <p>15 <b>A. I see that, yes.</b></p> <p>16 Q. Okay. And that is July 22, which is the day</p> <p>17 that the deal was originally made?</p> <p>18 <b>A. If that's the fact.</b></p> <p>19 Q. Let's take a look at all the way back in the</p> <p>20 beginning. I think it was 2. Yeah, take a look at</p> <p>21 Exhibit 2.</p> <p>22 <b>A. Okay. No, it's not there. 3, 4, 6, 9, 10,</b></p> <p>23 <b>15, 18, 17. Oh, here we go. Okay. Can you repeat</b></p> <p>24 <b>that, please?</b></p> <p>25 Q. Yeah. If you would just look at Exhibit 2,</p>
<p style="text-align: right;">453</p> <p>1 Q. Okay. He would have been your boss?</p> <p>2 <b>A. That's right.</b></p> <p>3 Q. What was the purpose of this e-mail that you</p> <p>4 sent Mr. Mehta?</p> <p>5 <b>A. I think they were at -- Vinmar I imagine was</b></p> <p>6 <b>asking me what was going on so I was advising them.</b></p> <p>7 Q. Okay. If you'll look at the very last two</p> <p>8 lines on Exhibit 44, sir. See where it says, "7:30,</p> <p>9 Rick note to Vuk operations. We cannot accept open</p> <p>10 origin for this material. It must be from USA. Surely</p> <p>11 you own this product. Please advise regarding shipment</p> <p>12 details."</p> <p>13 <b>A. Shipping, yeah.</b></p> <p>14 Q. Shipping details. That appears to be a</p> <p>15 quotation from Exhibit 17.</p> <p>16 <b>A. I believe it's a -- I believe it was a copy</b></p> <p>17 <b>from an e-mail, yeah.</b></p> <p>18 Q. Okay. And the reason that I ask, sir, is</p> <p>19 because if you note on Exhibit 44, the date that you put</p> <p>20 on that is 7:30, but Exhibit 17 is dated July 31. My</p> <p>21 question is, did you just make a mistake and put 7:30</p> <p>22 when it should have been 7:31?</p> <p>23 <b>A. I don't remember.</b></p> <p>24 Q. You agree that your e-mail to Mr. Rajevac that</p> <p>25 is at the bottom of Exhibit 17 is dated July 31?</p>	<p style="text-align: right;">455</p> <p>1 that is the first MOAB confirm. Correct?</p> <p>2 <b>A. I believe so.</b></p> <p>3 Q. Okay. The date on that is July 22 --</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. -- 2008?</p> <p>6 <b>A. That's right.</b></p> <p>7 Q. So my question to you is, when you write to</p> <p>8 Mr. Mehta, "7-22, MOAB confirm," you're making a</p> <p>9 reference to Exhibit No. 2?</p> <p>10 <b>A. I believe that was the intent.</b></p> <p>11 Q. Okay. I think even the amended confirms are</p> <p>12 all also dated July 22. Correct, sir?</p> <p>13 <b>A. July 22.</b></p> <p>14 Q. 3 and --</p> <p>15 <b>A. No. 3.</b></p> <p>16 Q. No. 3 and No. 4 are the amended MOAB confirms</p> <p>17 and they're also dated July 22. Correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And when you tell Mr. Mehta, "7-22, MOAB</p> <p>20 confirm, P equals 110 CFR" -- P meaning price. Correct?</p> <p>21 <b>A. That's right.</b></p> <p>22 Q. T -- "T/C 30 days, 1 to 15 September, seller's</p> <p>23 option." What does -- is it TIC or T -- or TK probably?</p> <p>24 I'm having a hard time reading what it says, but that's</p> <p>25 referring to the payment terms. Correct, sir?</p>

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<p style="text-align: right;">456</p> <p>1 THE REPORTER: To the what? Excuse me.</p> <p>2 MR. DIAZ-ARRASTIA: Payment terms.</p> <p>3 <b>A. Actually I'm not sure.</b></p> <p>4 Q. (BY MR. DIAZ-ARRASTIA) You're not sure.</p> <p>5 Okay. "Seller's option declared by August 8th," and</p> <p>6 then you write in parentheses, "No requirement for load</p> <p>7 port." You see that, sir?</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. Okay. Is that a "yes"?</p> <p>10 <b>A. Yes. Load port.</b></p> <p>11 Q. Yeah. And it is true that you could load --</p> <p>12 that there could be foreign MX in storage at a U.S. port</p> <p>13 and you could load MX in a U.S. port that was not of</p> <p>14 U.S. origin. Is that correct?</p> <p>15 <b>A. The origin is determined at the point of -- at</b></p> <p>16 <b>the load point so where the physical balance coming --</b></p> <p>17 <b>came from. I've never seen that happen, but in concept</b></p> <p>18 <b>it could.</b></p> <p>19 Q. Calling your attention to Exhibit 45,</p> <p>20 Dr. Wilson. It's an e-mail communication from you to</p> <p>21 Hermant Goradia, is that correct, sir --</p> <p>22 <b>A. That's right.</b></p> <p>23 Q. -- on August the 6th?</p> <p>24 And the subject is Tricon communication</p> <p>25 draft to discuss. Correct?</p>	<p style="text-align: right;">458</p> <p>1 <b>A. I believe so.</b></p> <p>2 Q. Okay. If you'll take a look at Exhibit 9,</p> <p>3 that is the communication as it was sent to Mr. Leyman</p> <p>4 and then he forwarded it to Tricon. Correct?</p> <p>5 <b>A. That's the e-mail trail here, that's correct.</b></p> <p>6 Q. That is the same communication that you had</p> <p>7 drafted in Exhibit 45?</p> <p>8 <b>A. That's correct.</b></p> <p>9 Q. And your proposal in this e-mail is both for</p> <p>10 U.S. origin material to be delivered at Korea or Taiwan</p> <p>11 by no later than the 15th of September. Correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Take a look at Exhibit 18, which I think we've</p> <p>14 looked at earlier. Now, in that e-mail, Mr. Lockwood is</p> <p>15 proposing to deliver U.S. origin MX that has an ETA of</p> <p>16 September the 6th. Is that correct, sir?</p> <p>17 <b>A. That's correct.</b></p> <p>18 Q. And you did not accept that proposal?</p> <p>19 <b>A. That's correct.</b></p> <p>20 Q. Mr. Wilson, is it true that the price of MX</p> <p>21 continued to drop through July and August of 2008?</p> <p>22 <b>A. I don't remember.</b></p> <p>23 Q. Okay. Is it true that it was very difficult</p> <p>24 to find anyone interested in buying any MX during that</p> <p>25 period of time in 2008?</p>
<p style="text-align: right;">457</p> <p>1 "Yes," sir? I'm sorry.</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. Who is Mr. Goradia?</p> <p>4 <b>A. He is one of the owners of Vinmar.</b></p> <p>5 Q. Okay. What was the purpose of this e-mail?</p> <p>6 <b>A. The purpose of the e-mail was -- what we</b></p> <p>7 <b>wanted to do was stick to the original terms of the</b></p> <p>8 <b>deal. And at this point in time, doing so was going to</b></p> <p>9 <b>incur considerable loss to Vinmar. So I was notifying</b></p> <p>10 <b>the owners.</b></p> <p>11 Q. What's going on in Exhibit 45 is you are</p> <p>12 drafting an e-mail. Correct?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. And you were going to send the e-mail</p> <p>15 to Ed Leyman?</p> <p>16 <b>A. Or Tricon, yeah.</b></p> <p>17 Q. Why were you running a draft of your</p> <p>18 communication by Mr. Goradia, Mr. Antonvich and</p> <p>19 Mr. Mehta?</p> <p>20 <b>A. Because it's their company.</b></p> <p>21 Q. Did they ask you to draft that communication?</p> <p>22 <b>A. No.</b></p> <p>23 Q. It was your idea to send this communication?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And did you actually send that communication?</p>	<p style="text-align: right;">459</p> <p>1 <b>A. I did not sell any. I can say that.</b></p> <p>2 Q. If you will take a look at Exhibit 46,</p> <p>3 Dr. Wilson. It appears to be instant message</p> <p>4 communications between you and Ed Leyman. Correct, sir?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. If you will take a look at about two thirds of</p> <p>7 the way down. It says, "Ed Leyman, MOAB Oil, any buying</p> <p>8 interest FOB USGC?" Have you found that, sir?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And your response is, "Re: Buying interest not</p> <p>11 today. Customers are hiding."</p> <p>12 <b>A. That's right.</b></p> <p>13 Q. Did I read that correctly, sir?</p> <p>14 <b>A. You did.</b></p> <p>15 Q. Are you telling Mr. Leyman that there are no</p> <p>16 customers buying MX when these communications took</p> <p>17 place?</p> <p>18 <b>A. I don't remember the intent of the</b></p> <p>19 <b>conversation, but that's what the words would suggest.</b></p> <p>20 <b>EXAMINATION</b></p> <p>21 BY MR. LEE:</p> <p>22 Q. Do you know for certain whether the receipt of</p> <p>23 the e-mail from Mr. Pascu on July 31st at 1:43 was the</p> <p>24 first time that you became aware that Tricon had a</p> <p>25 different understanding of this alleged transaction?</p>

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<p style="text-align: right;">460</p> <p>1 <b>A. Is that the first time? I can't say that, no.</b></p> <p>2 Q. Okay. Are you aware of any other written</p> <p>3 communication that was sent to you prior to July 31st at</p> <p>4 1:39 p.m. that would have -- that discussed Tricon's</p> <p>5 claim that it could provide Asian origin MX?</p> <p>6 <b>A. No, but usually if there were an issue -- I</b></p> <p>7 <b>mean, in this case, I just don't remember. The standard</b></p> <p>8 <b>was Laurentiu to call me rather than send me an e-mail.</b></p> <p>9 Q. Okay. And so it's very possible that the</p> <p>10 first time you actually found out about this from</p> <p>11 Mr. Pascu was on the afternoon of July 31, 2008.</p> <p>12 Correct?</p> <p>13 <b>A. I can't state unequivocally the exact time</b></p> <p>14 <b>that I discovered that there was a -- there was an</b></p> <p>15 <b>issue, but I remember the emotional part of discovering</b></p> <p>16 <b>there was an issue because, you know, you look back and</b></p> <p>17 <b>you see the pieces that weren't quite right and, you</b></p> <p>18 <b>know, it hits you. So exactly what time I got that</b></p> <p>19 <b>information was -- I just can't tell you. I don't know.</b></p> <p>20 Say that again. Mr. Leyman --</p> <p>21 Q. Did Mr. Leyman tell you that as part of his</p> <p>22 broker service that he recorded phone calls?</p> <p>23 <b>A. Yes, he did.</b></p> <p>24 Q. Okay. Does it -- does it surprise you to find</p> <p>25 out that there are no tape recordings of this</p>	<p style="text-align: right;">462</p> <p>1 STEVE SIMPSON,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 DIRECT EXAMINATION (2:05 p.m.)</p> <p>4 BY MR. DIAZ-ARRASTIA:</p> <p>5 Q. Mr. Simpson, could you state your name for the</p> <p>6 record, please?</p> <p>7 <b>A. Steve C. Simpson.</b></p> <p>8 Q. And tell us a little bit about your background</p> <p>9 and experience trading petrochemicals?</p> <p>10 <b>A. After college and a short time in the Army, I</b></p> <p>11 <b>went with a company called Kerr McGee. I started there</b></p> <p>12 <b>in the accounting group. And after 12 and a half years,</b></p> <p>13 <b>I had moved up to manager of international trading and</b></p> <p>14 <b>transportation, bought crude oils and --</b></p> <p>15 Q. Could you raise your voice a little bit,</p> <p>16 please?</p> <p>17 <b>A. Sure. I was manager of international trading</b></p> <p>18 <b>and transportation for them. From there -- after 12 and</b></p> <p>19 <b>a half years, I left Kerr McGee and went to Northeast</b></p> <p>20 <b>Petroleum. Northeast Petroleum, I was VP of products --</b></p> <p>21 <b>of crude oil supply and then of products supply later</b></p> <p>22 <b>and manned the supply group for a couple of years.</b></p> <p>23 At that time they were sold to Charter</p> <p>24 Oil. And I worked for about a year in Houston at</p> <p>25 Charter Oil as vice president of product supply. And</p>
<p style="text-align: right;">461</p> <p>1 transaction?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>(This is the end of the playback of the</b></p> <p>4 <b>edited version of the videotaped deposition of Richard</b></p> <p>5 <b>W. Wilson, Ph.D., that was originally taken on</b></p> <p>6 <b>August 30, 2010.)</b></p> <p>7 JUDGE BENTON: All right. Let's take</p> <p>8 about a ten-minute break.</p> <p>9 (Recess from 1:49 p.m. to 2:04 p.m.)</p> <p>10 JUDGE BENTON: Okay. Back on the record.</p> <p>11 Call your next witness.</p> <p>12 MR. DIAZ-ARRASTIA: Our next witness is</p> <p>13 Steve Simpson.</p> <p>14 JUDGE BENTON: Mr. Simpson, if you will</p> <p>15 your raise your right hand.</p> <p>16 (At this time the witness was duly sworn</p> <p>17 by Judge Benton.)</p> <p>18 MR. DIAZ-ARRASTIA: Members of the Panel,</p> <p>19 Mr. Simpson's report was previously submitted to the</p> <p>20 panel, but it's also in the Tricon Exhibit Book under</p> <p>21 Tricon Exhibit 36, 36.</p> <p>22 JUDGE BENTON: Tricon 36.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">463</p> <p>1 then I moved to London for about two and a half, almost</p> <p>2 three years, senior trader.</p> <p>3 I moved back from London, started a</p> <p>4 company called Petrotex and I traded petroleum futures</p> <p>5 as well as other futures, wheat, corn on the futures</p> <p>6 markets.</p> <p>7 Then in '89 I went to work for -- back to</p> <p>8 work for Kerr-McGee in the Houston office in the</p> <p>9 refining group. And what I did there is I traded the</p> <p>10 futures for them for about six or eight months and then</p> <p>11 the man that had their petrochemicals got killed in a</p> <p>12 balloon accident and they offered me that job and I took</p> <p>13 the petrochemicals over.</p> <p>14 About nine months later, they offered me</p> <p>15 specialty products, and I did that until they sold their</p> <p>16 refineries in 1995. In 1995, I went to work for a</p> <p>17 trading company called Rio Energy. I wanted to do</p> <p>18 aromatics and gasoline feedstocks. And I did that for</p> <p>19 about a year and then I decided I didn't want to be in</p> <p>20 that business.</p> <p>21 I left there and I went to Valero Energy</p> <p>22 in '97. And in 2008, I retired from Valero Energy. I</p> <p>23 started there as manager of petrochemicals. We had a</p> <p>24 big fractionation unit to produce xylenes. And I did</p> <p>25 that and then I did a lot of different specialty</p>



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<p style="text-align: right;">464</p> <p>1 products, did a lot of aromatics.</p> <p>2 And then in 2001, we bought Diamond</p> <p>3 Shamrock. At that time I became director of</p> <p>4 petrochemicals which handled aromatics and propylenes.</p> <p>5 And then I ended up retiring as executive director of</p> <p>6 petrochemicals.</p> <p>7 Q. And are you still involved in the</p> <p>8 petrochemicals markets, sir?</p> <p>9 A. Yes. I retired May 31st. And June 1st I went</p> <p>10 to work for Valero as a consultant on a part-time basis</p> <p>11 on a project where you reduce the benzene in the</p> <p>12 gasoline pool, and that project will probably be over</p> <p>13 around the first quarter of 2011, a lot of capital</p> <p>14 expense so we kind of do those things.</p> <p>15 And then also I write a weekly trading</p> <p>16 report for the aromatics group on what they should be on</p> <p>17 the trading side, if they should buy or sell or do</p> <p>18 nothing, hold.</p> <p>19 Q. And during your career that you have</p> <p>20 described, sir, have you been actively involved as a</p> <p>21 trader?</p> <p>22 A. Yes.</p> <p>23 Q. And on how many trades have you personally</p> <p>24 performed?</p> <p>25 A. At Valero, I've done over a thousand trades.</p>	<p style="text-align: right;">466</p> <p>1 Q. And is it also customary that the principals</p> <p>2 do not communicate directly with each other but only</p> <p>3 through the broker?</p> <p>4 A. It can be customary to do that or communicate</p> <p>5 with each other afterwards or even during it sometimes,</p> <p>6 but it's customary. I mean, it's fine. A lot of people</p> <p>7 don't talk to each other. They just do it through a</p> <p>8 broker.</p> <p>9 Q. Mr. Simpson, someone just pointed out to me.</p> <p>10 Was the last time you personally made an MX trade in</p> <p>11 March of 2008 or March of 2009?</p> <p>12 A. 2008. Did I say '8?</p> <p>13 Q. I think you might have said '9.</p> <p>14 A. Oh, I'm sorry. It's 2008, right before I</p> <p>15 retired.</p> <p>16 Q. Okay. Mr. Simpson, do you know Ed Leyman?</p> <p>17 A. Yes.</p> <p>18 Q. Who is Ed Leyman?</p> <p>19 A. He's a broker. He's been in the industry.</p> <p>20 Sometime in the '90s is the first time I ran across him.</p> <p>21 Q. Okay. Was he the first broker in the U.S. to</p> <p>22 deal in MX?</p> <p>23 A. I believe so. He started out doing specialty</p> <p>24 products where something would be off-spec and he'd</p> <p>25 broker those. He was good at understanding the chemical</p>
<p style="text-align: right;">465</p> <p>1 Q. And how much of your trading experience has</p> <p>2 been with aromatics?</p> <p>3 A. I'd say probably 50 percent of it.</p> <p>4 Q. And what are some of the other materials that</p> <p>5 you have traded?</p> <p>6 A. Propylene is a big material we traded a lot</p> <p>7 of. I've done all the gasoline blend stocks from MTB to</p> <p>8 methanol, LPG's. I've bought natural gas. I've done</p> <p>9 anything that goes into or out of a refinery as a bulk</p> <p>10 material.</p> <p>11 Q. And have you also managed traders?</p> <p>12 A. Yes.</p> <p>13 Q. While you managed traders, were you also</p> <p>14 personally doing trades?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. When was the last time that you</p> <p>17 personally made a mixed xylenes trade?</p> <p>18 A. I believe that was in March of 2009.</p> <p>19 Q. Mr. Simpson, in trading -- in petrochemicals</p> <p>20 trading, is it common to use brokers when making deals?</p> <p>21 A. Yes.</p> <p>22 Q. And when brokers are used, is it customary</p> <p>23 that the same broker will represent both sides of the</p> <p>24 transaction?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">467</p> <p>1 makeups of different products and so he would broker</p> <p>2 those. And then he started trading in benzene, toluene</p> <p>3 and xylene.</p> <p>4 Q. And how many brokers deal in U.S. -- in MX in</p> <p>5 the U.S.?</p> <p>6 A. I think there's about three to five now. Some</p> <p>7 people come in. Some people go back out so...</p> <p>8 Q. What is Mr. Leyman's reputation in the</p> <p>9 petrochemicals trading industry?</p> <p>10 A. I think he's an extremely good broker, does a</p> <p>11 good job at what he does. If he didn't, people wouldn't</p> <p>12 trade with him.</p> <p>13 Q. Have you personally used Mr. Leyman to broker</p> <p>14 trades?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And did you find that his reputation was</p> <p>17 deserved?</p> <p>18 A. Yes, very good.</p> <p>19 Q. And let me ask you, Mr. Simpson, if a broker</p> <p>20 favored one side over another in a deal, would that</p> <p>21 broker stay in business long?</p> <p>22 A. No, sir.</p> <p>23 Q. Why?</p> <p>24 A. Not at all. Because you want a fair playing</p> <p>25 field. You don't want the other party to know</p>

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<p style="text-align: right;">468</p> <p>1 everything going on and you know nothing. So if you</p> <p>2 felt like they were leaning one way or the other, you</p> <p>3 just wouldn't talk to them.</p> <p>4 Q. And obviously a broker has to bring parties</p> <p>5 together. Correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. If --</p> <p>8 A. That's all he's doing is just bringing two</p> <p>9 parties together.</p> <p>10 Q. A broker who has a reputation of favoring one</p> <p>11 party is going to have a hard time bringing the other</p> <p>12 party along. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. Can you tell me how long Mr. Leyman has been</p> <p>15 in business?</p> <p>16 A. I just knew of him sometime in the '90s.</p> <p>17 Q. Sir, in petrochemicals trading, is it a</p> <p>18 general expectation that traders have that a broker will</p> <p>19 not disclose the identity of a counterparty before a</p> <p>20 deal is made?</p> <p>21 A. Say that again, please.</p> <p>22 Q. Is it a general expectation in petrochemicals</p> <p>23 trading that a broker will not disclose a trader's</p> <p>24 identity before a deal is made?</p> <p>25 A. No. Only if he's asked not to. And if he's</p>	<p style="text-align: right;">470</p> <p>1 confidentiality and the other one does not?</p> <p>2 A. I don't believe there's anything that happens.</p> <p>3 I believe he's -- he's still fair to both parties. He</p> <p>4 just doesn't tell what your name is, who's out there</p> <p>5 doing what.</p> <p>6 Q. So he may disclose one side but not the other?</p> <p>7 A. Yes.</p> <p>8 Q. And that's not unusual?</p> <p>9 A. Not unusual at all.</p> <p>10 Q. Tell me, sir, what is meant by an indication?</p> <p>11 A. That's where you talk to a broker or to</p> <p>12 another party saying, "I might be an interested seller</p> <p>13 of mixed xylenes. I might be interested buyer of mixed</p> <p>14 xylenes. I might want to sell 20,000 barrels. I might</p> <p>15 want to sell 5,000 tons or I might want to buy those."</p> <p>16 It's not a firm offer. It doesn't tell a</p> <p>17 party, "I'm here to do this deal." It's just a</p> <p>18 discussion matter.</p> <p>19 Q. And so like I might be interested in buying or</p> <p>20 I might be interested in selling, but I'm not making a</p> <p>21 commitment?</p> <p>22 A. Correct.</p> <p>23 Q. And then tell me what a firm bid is.</p> <p>24 A. That is where you are committing to do</p> <p>25 whatever you tell them it is. And you always tell them</p>
<p style="text-align: right;">469</p> <p>1 asked not to, he won't disclose it.</p> <p>2 Q. Okay. And sometimes it happens that a trader</p> <p>3 may ask that his identity not be disclosed?</p> <p>4 A. Yes.</p> <p>5 Q. And the broker would respect that?</p> <p>6 A. Yes.</p> <p>7 Q. What happens if the trader does not request</p> <p>8 confidentiality?</p> <p>9 A. A lot of times when I would talk to him and</p> <p>10 he'd make -- he'd have something out there that I was</p> <p>11 really interested in doing, I would ask him probably who</p> <p>12 the party was.</p> <p>13 Q. And would he tell you?</p> <p>14 A. If it wasn't confidential, if they didn't say</p> <p>15 not to tell me, he'd tell me.</p> <p>16 Q. And does it sometimes happen that one side</p> <p>17 requests confidentiality and the other one does not?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Is that unusual?</p> <p>20 A. No. It can be -- it's pretty general. I</p> <p>21 mean --</p> <p>22 Q. And what happens?</p> <p>23 A. I usually never ask for confidentiality and</p> <p>24 some of the companies did and so Ed wouldn't tell you.</p> <p>25 Q. What happens when one side requests</p>	<p style="text-align: right;">471</p> <p>1 it's a firm bid. And if it's -- and it's -- usually</p> <p>2 what you have included in all that is quantity, quality,</p> <p>3 price, the real idea of what you're trying to do with</p> <p>4 that product that you're dealing with.</p> <p>5 Q. Okay. Firm bid, does that come from the</p> <p>6 buyer's side?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So a firm bid is when a buyer says, "I</p> <p>9 will buy on these terms"?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And it's a commitment?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. What is a firm offer?</p> <p>14 A. It's from the seller's side. He makes a firm</p> <p>15 offer that he'll do this and that if this number...</p> <p>16 That's it.</p> <p>17 Q. Same thing from the seller's side?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And in petrochemicals trading, do</p> <p>20 traders give brokers authority to make a deal by giving</p> <p>21 the broker a firm offer or a firm bid?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And we've talked a little bit about that, but</p> <p>24 what usually is contained in a firm offer or a firm bid?</p> <p>25 A. Well, you might not know the party at first,</p>

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<p style="text-align: right;">472</p> <p>1 but you will, but then you will know what the product</p> <p>2 is, the quantity, the quality usually of the product</p> <p>3 because that might have -- there's different qualities.</p> <p>4 So the quantity on -- and you try to -- Ed</p> <p>5 always works to try to get both sides saying the same</p> <p>6 thing on volumes, so if it's metric tons or barrels.</p> <p>7 You have your price, which is one of the important</p> <p>8 things, which are fixed or floating. You have your --</p> <p>9 usually your payment terms. And pretty standard in our</p> <p>10 industry is 30 days with and LC if it's required by</p> <p>11 whoever's selling department requires it.</p> <p>12 Q. Now, if there is something else special that a</p> <p>13 trader has such as "I need a particular origin for my</p> <p>14 material," is that also putting a firm bid or firm</p> <p>15 offer?</p> <p>16 A. If you want a specific origin, you definitely</p> <p>17 put that in your firm bid or your firm offer.</p> <p>18 Q. And I think you stated in the report that if</p> <p>19 you -- that origin of material is an up-front term in</p> <p>20 any negotiation. Do you recall that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Why is it important that origin be an up-front</p> <p>23 term?</p> <p>24 A. If it's not an up-front term, then you could</p> <p>25 have different origins that you move the product from.</p>	<p style="text-align: right;">474</p> <p>1 Brazil all the same, within a certain spec?</p> <p>2 A. Within a certain spec, yes, sir, it is.</p> <p>3 Q. Now, Mr. Simpson, in an industry -- when is it</p> <p>4 considered that a deal is made in the trade industry?</p> <p>5 A. If you're working direct, two parties just</p> <p>6 confirm that it's a -- it's a done deal and the deal is</p> <p>7 done right then. If it's through a broker like Ed</p> <p>8 Leyman, it's whenever Ed Leyman gets both sides lined up</p> <p>9 and he says the deal's done.</p> <p>10 Q. If the firm bid meets the firm offer, you have</p> <p>11 a deal?</p> <p>12 A. Yes, sir, if you -- as long as you give them</p> <p>13 the authority.</p> <p>14 Q. And you give them that authority by making a</p> <p>15 firm bid or a firm offer?</p> <p>16 A. You give them that authority up front.</p> <p>17 Q. Now, if a broker is used, is it customary for</p> <p>18 the broker to send a written confirm?</p> <p>19 A. In today's market, yes, it is. That probably</p> <p>20 changed from the last ten years. Ten years ago you</p> <p>21 didn't have written confirms.</p> <p>22 Q. Is it important for the trader to review the</p> <p>23 written confirm right away?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And why is that important?</p>
<p style="text-align: right;">473</p> <p>1 As in this case, I mean, it was going to Asia. You have</p> <p>2 a very -- you had a lot of timing issues there and so</p> <p>3 you'd need to know that up front to know that you can</p> <p>4 supply those barrels.</p> <p>5 Q. Okay. Now, in petrochemicals trading, is it</p> <p>6 common for buyers to be concerned with the origin of a</p> <p>7 product?</p> <p>8 A. Only if their -- they think their customer</p> <p>9 would require it.</p> <p>10 Q. Well, is it -- in most of the petrochemical</p> <p>11 trades that you have done, more than 1,000 trades, was</p> <p>12 origin something that the buyer was concerned with?</p> <p>13 A. No, not really.</p> <p>14 Q. Okay. Is it a common thing that --</p> <p>15 A. Majority of the time origin is never</p> <p>16 discussed.</p> <p>17 Q. Okay. And why is it that it's never</p> <p>18 discussed? Is it because MX is a commodity?</p> <p>19 A. MX is traded as a commodity. It's -- you have</p> <p>20 a couple of different specs that you can use, most of it</p> <p>21 Gulf Coast barrels traded with 5211 20 bromine. Europe</p> <p>22 might produce that, Asia can produce that and so you</p> <p>23 just need to know if it's a requirement up front.</p> <p>24 Q. Yeah. Within a certain spec, is MX that's</p> <p>25 manufactured in the U.S. or in Asia or Europe or in</p>	<p style="text-align: right;">475</p> <p>1 A. Just to make sure both parties have the same</p> <p>2 terms and know what they're doing.</p> <p>3 Q. Okay. Can we -- will you take a look at Joint</p> <p>4 Exhibit No. 4, sir, in the Joint Exhibit notebook in</p> <p>5 front of you?</p> <p>6 And we will also put it on the screen.</p> <p>7 Let's look at the second page of that please, sir.</p> <p>8 A. No. 4?</p> <p>9 Q. Yes, Joint Exhibit No. 4, second page.</p> <p>10 A. Okay.</p> <p>11 Q. Is that an example of a broker confirm?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What happens if there is a mistake in the</p> <p>14 confirm?</p> <p>15 A. Usually contact the broker and then you</p> <p>16 usually are -- and/or contact the other party to make</p> <p>17 sure everybody knows there's a mistake in it, to get it</p> <p>18 corrected and get it out -- get it back out as quick as</p> <p>19 you can.</p> <p>20 Q. And would you then expect to see an amended or</p> <p>21 corrected confirm?</p> <p>22 A. Yes.</p> <p>23 Q. And we're not going to put them up on the</p> <p>24 screen, Mr. Simpson, but if you would take a look at</p> <p>25 Joint Exhibits 3 and 2 just ahead of the one you were</p>

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<p style="text-align: right;">476</p> <p>1 looking at. And I think you've seen these before in</p> <p>2 this case. Correct, sir?</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 Q. Okay. And those appear to be -- these three</p> <p>5 joint exhibits, 2, 3 and 4, appear to be a series of</p> <p>6 confirms relating to the same deal for that and contain</p> <p>7 some corrections and changes?</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. And there's nothing unusual about that in</p> <p>10 petrochemicals trading, is there?</p> <p>11 <b>A. Not -- no, sir, there isn't. It's just is</b></p> <p>12 <b>your clerk in a hurry when they type it up? Did they --</b></p> <p>13 <b>did you scribble too bad so they couldn't read exactly</b></p> <p>14 <b>what you did? Did -- you also maybe just wrote the</b></p> <p>15 <b>wrong price down.</b></p> <p>16 Q. Okay. And none of exhibits -- Joint Exhibit</p> <p>17 2, 3 or 4 say anything about the origin of the material.</p> <p>18 Is that correct?</p> <p>19 <b>A. No, sir, they do not.</b></p> <p>20 Q. What does that mean in the industry?</p> <p>21 <b>A. It's open origin.</b></p> <p>22 Q. Is it the standard in the industry that if</p> <p>23 material is to be of open origin it has to be put in the</p> <p>24 confirm, but if it's a specific origin it can be left</p> <p>25 blank?</p>	<p style="text-align: right;">478</p> <p>1 Q. The notebook that says Tricon Exhibits.</p> <p>2 <b>A. Oh.</b></p> <p>3 Q. First look at Tricon Exhibit No. 1.</p> <p>4 MR. DIAZ-ARRASTIA: And if you can make</p> <p>5 it --</p> <p>6 Q. (BY MR. DIAZ-ARRASTIA) And, Mr. Leyman, is</p> <p>7 that an example of a confirm -- Mr. Simpson, is that an</p> <p>8 example of a confirm that specifies origin?</p> <p>9 <b>A. No, sir.</b></p> <p>10 Q. Exhibit No. 1 in the Tricon book, if you would</p> <p>11 take a look at the screen, sir, and we'll see where</p> <p>12 we're looking at.</p> <p>13 JUDGE WOOD: That may be too far for him.</p> <p>14 MS. LARSON: Under the quality line.</p> <p>15 JUDGE WOOD: He's going to need to look at</p> <p>16 the book.</p> <p>17 Q. (BY MR. DIAZ-ARRASTIA) Under the quality</p> <p>18 line.</p> <p>19 <b>A. Oh, I see it in the quality line. At the end</b></p> <p>20 <b>of the quality line is what you're saying.</b></p> <p>21 Q. At the end of the quality line, it says, "To</p> <p>22 be U.S. origin"?</p> <p>23 <b>A. Yes, sir.</b></p> <p>24 Q. Is that an example of a broker confirm that</p> <p>25 specifies a particular origin?</p>
<p style="text-align: right;">477</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Listen to my question.</p> <p>3 <b>A. Oh, okay. You said it backwards --</b></p> <p>4 Q. Is it --</p> <p>5 <b>A. -- from what I thought you were going to say.</b></p> <p>6 Q. Is it standard in the industry that if</p> <p>7 material is open origin it must be specified in the</p> <p>8 confirm?</p> <p>9 <b>A. No, sir.</b></p> <p>10 MR. LEE: Objection. Leading.</p> <p>11 Q. (BY MR. DIAZ-ARRASTIA) But if it's --</p> <p>12 JUDGE BENTON: It's overruled.</p> <p>13 Q. (BY MR. DIAZ-ARRASTIA) But if it's of</p> <p>14 specific origin, it can be left blank, or is it the</p> <p>15 other way around?</p> <p>16 <b>A. If it's --</b></p> <p>17 Q. Or is it the other way around?</p> <p>18 <b>A. If it's of specific origin, it will be</b></p> <p>19 <b>included in the confirm.</b></p> <p>20 Q. Okay. Can we --</p> <p>21 <b>A. If it's an open origin, you won't ever find it</b></p> <p>22 <b>in there.</b></p> <p>23 Q. Okay. Take a look at the Tricon Exhibit</p> <p>24 notebook.</p> <p>25 <b>A. Which one?</b></p>	<p style="text-align: right;">479</p> <p>1 <b>A. Yes, sir, and that -- and that's usually where</b></p> <p>2 <b>you put it.</b></p> <p>3 Q. Okay. And take a look now at the next</p> <p>4 exhibit, Tricon Exhibit No. 2.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. In the quality line there, it says, "Product</p> <p>7 must be non-Iranian or Chinese origin"?</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. Is that another example of a confirm that</p> <p>10 specifies a particular origin, this time saying it must</p> <p>11 not be of a particular origin?</p> <p>12 <b>A. Yes, sir.</b></p> <p>13 Q. And you see things like that also?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And also take a look at Tricon Exhibit No. 3,</p> <p>16 the next one, the same place. It says in the quality</p> <p>17 line, "No Iranian or Chinese origin"?</p> <p>18 <b>A. Yes, sir.</b></p> <p>19 Q. Okay. Again, this is another example of the</p> <p>20 confirm that specifies the origin?</p> <p>21 <b>A. Yes, sir.</b></p> <p>22 Q. And that is what you would expect to see if</p> <p>23 origin is an important part of the deal or a term of the</p> <p>24 deal?</p> <p>25 <b>A. Yes, sir, it would be included.</b></p>



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<p style="text-align: right;">480</p> <p>1 Q. Is it also customary in petrochemicals trading</p> <p>2 that after a deal is made the parties will send their</p> <p>3 terms and conditions of sale?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Is that sometimes called passing papers?</p> <p>6 A. That was my term. My -- I say we pass paper</p> <p>7 back and forth to each other. Both parties usually send</p> <p>8 paper and it will have other conditions and terms in</p> <p>9 there. It will be spelled out at a little more in</p> <p>10 detail.</p> <p>11 Sometimes Homeland -- well, in the last</p> <p>12 two or three years, Homeland Security has put some</p> <p>13 requirements so people put those in there now.</p> <p>14 Q. Now, when the parties pass paper, do they --</p> <p>15 in the petrochemicals industry, do they intend to cancel</p> <p>16 the deal that had just been made?</p> <p>17 A. No, sir.</p> <p>18 MR. LEE: Objection. Calls for</p> <p>19 speculation.</p> <p>20 JUDGE BENTON: It's overruled.</p> <p>21 Q. (BY MR. DIAZ-ARRASTIA) What is the intention</p> <p>22 of passing papers?</p> <p>23 A. To add the rest of the terms and conditions in</p> <p>24 there.</p> <p>25 Q. Add terms to the contract?</p>	<p style="text-align: right;">482</p> <p>1 terms and conditions of sale that are passed between the</p> <p>2 parties after a deal is made?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Now, let's take a look at the last page</p> <p>5 of Exhibit No. 5. Do you see where there are spaces for</p> <p>6 signatures?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And have you seen paper that is passed that</p> <p>9 has spaces for signatures at the end?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And is it customary for these</p> <p>12 additional terms to be signed or not to be signed?</p> <p>13 A. In my view, it's customary that they not be</p> <p>14 signed.</p> <p>15 Q. Okay. Is there a difference whether the deal</p> <p>16 might be a long-term contract or a spot deal?</p> <p>17 A. Yes, sir. If it's a long-term contract,</p> <p>18 they're usually signed. When I say a long-term</p> <p>19 contract, I'm talking about a year or longer, what you</p> <p>20 do with a third party.</p> <p>21 Q. Okay. And what's a spot deal?</p> <p>22 A. That's usually a one-time or two-time or</p> <p>23 three-time deal, but it's just very, very prompt --</p> <p>24 Q. And --</p> <p>25 A. -- very quick.</p>
<p style="text-align: right;">481</p> <p>1 A. Right.</p> <p>2 Q. And does it sometimes happen that the parties</p> <p>3 do not reach agreement on some or all of these</p> <p>4 additional terms?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And does that mean that there is no deal?</p> <p>7 A. No, sir. I've disagreed with people on the</p> <p>8 total terms and conditions and we still sold the barrels</p> <p>9 or bought the barrels.</p> <p>10 Q. Okay. If there is agreement on these</p> <p>11 additional terms, do they become part of the deal?</p> <p>12 MR. LEE: Objection. Calls for a legal</p> <p>13 conclusion.</p> <p>14 JUDGE BENTON: It's overruled.</p> <p>15 Q. (BY MR. DIAZ-ARRASTIA) Well, in your</p> <p>16 understanding as a trader, sir, if the side -- if the</p> <p>17 parties agree on these additional terms, is it your</p> <p>18 understanding that they become a part of the deal?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Let's take a look back in the Joint Exhibit</p> <p>21 notebook, sir, Joint Exhibit No. 5, and again beginning</p> <p>22 on the second page of that exhibit.</p> <p>23 A. Page 2. Okay.</p> <p>24 Q. Yes, sir. And actually let's turn to one more</p> <p>25 page after that. And is that an example of additional</p>	<p style="text-align: right;">483</p> <p>1 Q. Do you usually see additional terms signed in</p> <p>2 spot deals?</p> <p>3 A. I never have, no, sir. I've never signed any.</p> <p>4 You know, people will send them to me, but I don't sign</p> <p>5 them.</p> <p>6 Q. In petrochemicals -- when you were trading</p> <p>7 petrochemicals and you ran petrochemicals trading</p> <p>8 operations, was it common for the terms and conditions</p> <p>9 of sale to be negotiated by the operations specialists?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And what is an operations specialist?</p> <p>12 A. In our world, we call them schedulers. They</p> <p>13 schedule the product. They move the product. They</p> <p>14 really take it from you and make sure it's completed and</p> <p>15 done.</p> <p>16 Q. And, Mr. Simpson, if your operations</p> <p>17 specialist or scheduler were to learn that some aspect</p> <p>18 of the deal that was very important to the trader, if</p> <p>19 they were to learn from the counterparty that that was</p> <p>20 not necessarily going to be provided, in your experience</p> <p>21 how long would it take for that operations specialist to</p> <p>22 inform the trader?</p> <p>23 A. In my experience, it would take less than</p> <p>24 30 seconds because it would probably take them that much</p> <p>25 time to get off the phone and get your attention that</p>

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<p style="text-align: right;">484</p> <p>1 <b>you had a problem.</b></p> <p>2 Q. Would the operations specialist wait a day and</p> <p>3 a half to inform the trader?</p> <p>4 <b>A. No, sir.</b></p> <p>5 Q. Now, Mr. Simpson, in petrochemicals trading,</p> <p>6 do the terms -- well, let me ask you this. What does</p> <p>7 product origin mean?</p> <p>8 <b>A. Where the product was produced.</b></p> <p>9 Q. And we have also during the course of this</p> <p>10 hearing heard the term "loading port" or "port of</p> <p>11 loading." What does that mean?</p> <p>12 <b>A. It means where you're going to physically load</b></p> <p>13 <b>the product from.</b></p> <p>14 Q. Is it understood in petrochemicals trading</p> <p>15 that origin and load port mean different things?</p> <p>16 <b>A. Yes, sir.</b></p> <p>17 Q. Is it possible to load MX at a U.S. Gulf port</p> <p>18 that is not of U.S. origin?</p> <p>19 <b>A. Yes, sir.</b></p> <p>20 Q. And tell us how that can work.</p> <p>21 <b>A. You just work it with customs. And as you</b></p> <p>22 <b>imported it -- it really wasn't imported. You just put</b></p> <p>23 <b>it in a bonded tank and work through U.S. customs to</b></p> <p>24 <b>make sure they knew it wasn't being imported and that</b></p> <p>25 <b>way it could be exported.</b></p>	<p style="text-align: right;">486</p> <p>1 guaranteed?</p> <p>2 <b>A. No, sir. It doesn't mean it's guaranteed.</b></p> <p>3 Q. What does it mean?</p> <p>4 <b>A. It's just that it means it might come from</b></p> <p>5 <b>there. It might not come from there.</b></p> <p>6 Q. Now, when Mr. Wilson uses the word, "Re:</p> <p>7 Origin, we won't know until we declare discharge port,"</p> <p>8 to someone in the industry is he talking about the</p> <p>9 loading port or is he talking about where the material</p> <p>10 was manufactured?</p> <p>11 <b>A. He's talking about where the material was</b></p> <p>12 <b>manufactured.</b></p> <p>13 Q. Okay. And when Mr. Wilson says, "Most likely</p> <p>14 USG," what does that mean to someone in the industry</p> <p>15 with regard to a guarantee of origin?</p> <p>16 <b>A. It's not a guarantee.</b></p> <p>17 Q. Does this mean to somebody in the industry</p> <p>18 that there is no guarantee?</p> <p>19 <b>A. That's the way I would read it totally. I</b></p> <p>20 <b>think the whole industry would.</b></p> <p>21 JUDGE DAVIDSON: I assume the U.S. in USG</p> <p>22 stand for United States. What does the G --</p> <p>23 THE WITNESS: U.S. Gulf Coast.</p> <p>24 JUDGE DAVIDSON: U.S. Gulf Coast. Got it.</p> <p>25 JUDGE BENTON: Are you passing?</p>
<p style="text-align: right;">485</p> <p>1 Q. Take a look at -- again, in the Joint Exhibit</p> <p>2 notebook, Joint Exhibit No. 8, if we could put that on</p> <p>3 the screen.</p> <p>4 <b>A. 8?</b></p> <p>5 Q. 8.</p> <p>6 <b>A. Okay.</b></p> <p>7 Q. I want you to take a look at Re: Origin sort</p> <p>8 of in the middle -- lower middle of the page. Can you</p> <p>9 see where Tracy is highlighting some language on the</p> <p>10 screen?</p> <p>11 <b>A. Yes, sir.</b></p> <p>12 Q. Okay. And that appears to be an e-mail from</p> <p>13 Rick Wilson to Eduardo Anaya on July 25, 2008, at</p> <p>14 10:33 a.m. Do you -- do you see where I'm referring to?</p> <p>15 <b>A. Yes, sir.</b></p> <p>16 Q. Okay. And Mr. Willis telling Mr. Anaya, "Re:</p> <p>17 Origin, we won't know until we declare discharge port.</p> <p>18 Most likely USG."</p> <p>19 <b>A. Yes, sir.</b></p> <p>20 Q. Let me ask you something else, sir. In the</p> <p>21 petrochemicals industry, is there a difference between</p> <p>22 most likely and guarantee?</p> <p>23 <b>A. Yes, sir, definitely.</b></p> <p>24 Q. Does most -- does most likely mean that it is</p> <p>25 guaranteed or that it might be but it won't be</p>	<p style="text-align: right;">487</p> <p>1 MR. DIAZ-ARRASTIA: Not yet, sir, but I</p> <p>2 don't have much longer.</p> <p>3 Q. (BY MR. DIAZ-ARRASTIA) Mr. Simpson, what does</p> <p>4 it mean to be long or short on a product like MX?</p> <p>5 <b>A. When you're long on a product, it means you</b></p> <p>6 <b>bought the material. You might not have it in your</b></p> <p>7 <b>possession, but you have an obligation to purchase the</b></p> <p>8 <b>material, and that means you're going to have 5,000</b></p> <p>9 <b>metric tons that you're long material on. When you're</b></p> <p>10 <b>short, you've sold the product.</b></p> <p>11 Q. But you don't yet own it?</p> <p>12 <b>A. But you probably don't yet own it.</b></p> <p>13 Q. Is it customary for a trader to sell a product</p> <p>14 it does not yet own?</p> <p>15 <b>A. Yes, sir.</b></p> <p>16 Q. Can that be an important way for a trader to</p> <p>17 make money in petrochemicals trading?</p> <p>18 <b>A. That's usually about the -- that's not the</b></p> <p>19 <b>only way, but it's the main way they do make money.</b></p> <p>20 Q. Okay. So do traders sell when they are short</p> <p>21 sometimes?</p> <p>22 <b>A. Yes, sir.</b></p> <p>23 Q. And do they also sometimes buy when they are</p> <p>24 long?</p> <p>25 <b>A. Yes, sir. The cost of carrying physical</b></p>

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<p style="text-align: right;">488</p> <p>1 inventory is just too prohibitive for a trader.  2 Q. Tell me, sir, is the price of MX volatile?  3 A. Extremely.  4 Q. Is -- the price of MX, does it track -- tend  5 to track the price of crude oil?  6 A. Over a long period of time, yes, sir, it will.  7 Q. And what can happen to the price -- well, let  8 me put it this way. When the price of MX falls rapidly,  9 what can happen to the market?  10 A. I use the term it freezes, which means there's  11 really no spot buyers out there. You still have  12 contract agreements between people, and those are  13 usually floating prices. And they usually have a  14 mechanism that forces that -- get a price fixed for that  15 contract, and it's usually a contract month --  16 Q. Okay. And --  17 A. -- but a --  18 Q. And let me -- let me interrupt you there a  19 moment.  20 A. Okay.  21 Q. You're familiar with the sale that Tricon made  22 to KP Chemicals --  23 A. Yes, sir.  24 Q. -- which was the replacement sale in this  25 contract?</p>	<p style="text-align: right;">490</p> <p>1 A. Yes, sir.  2 Q. Okay. And do you -- is that what you remember  3 happening in the second half of 2008 for the MX prices?  4 A. Yes, sir.  5 Q. And what was happening to the price of crude  6 oil at that same time?  7 A. It went from \$147 a ton down to about \$32 -- I  8 mean \$147 a barrel to \$32 a barrel in a four-month  9 period.  10 Q. There was a precipitous decline in crude?  11 A. Very.  12 Q. And a precipitous decline in MX tended to  13 track it?  14 A. Yes.  15 Q. Does it surprise you that under those  16 conditions Tricon was not able to find a replacement  17 buyer for the Vinmar MX in the spot market in all of  18 September of 2008?  19 A. No, sir, not at all.  20 Q. Now, sir, have you reviewed Mr. Wilson's  21 testimony in this case?  22 A. Yes, sir.  23 Q. Do you remember if Mr. Wilson said whether he  24 had a specific sale that he was going to match to the  25 Tricon MX?</p>
<p style="text-align: right;">489</p> <p>1 Is that the sort of deal you're talking  2 about?  3 A. Yes, sir.  4 Q. Okay.  5 A. As a term agreement, they don't -- they don't  6 know what the price is, but they know what the terms and  7 conditions of the pricing are.  8 Q. And what happens to spot sales when the market  9 freezes?  10 A. I just believe you can't find a buyer. You  11 can always find a buyer, but what price? It's sort of  12 like it might cost you \$200 a metric ton to get someone  13 to step up and buy it.  14 Q. And how long can the market stay frozen this  15 way?  16 A. I've seen it up to three or four months.  17 Q. And can you tell us what happened to the price  18 of MX in the period of July 22, 2008, through  19 September 30, 2008?  20 A. It went straight down almost. Not totally  21 down but it went -- fell very hard.  22 Q. Let's take a look at Tricon Exhibit 32 in the  23 Tricon notebook.  24 A. Oh, Tricon.  25 Q. And there's a chart of MX prices.</p>	<p style="text-align: right;">491</p> <p>1 A. He was trying to match a sale to Formosa and  2 he had a sales rep -- sales representative, something  3 like that that he called him, that was going to their  4 office to try to be involved with the bid that Formosa  5 was putting out, but he got there too late and he missed  6 that bid.  7 Q. So is it your understanding that Mr. Wilson  8 lost the specific sale that he wanted to match to the  9 Tricon MX?  10 A. Yes, sir.  11 Q. Do you know Formosa?  12 A. I know of them, yes. Met them before.  13 Q. What is Formosa?  14 A. It's a consumer of xylene. Mainly an  15 paraxylene producer. They do other things, but that's  16 one of the things that they do.  17 Q. Does Formosa buy Asian origin MX?  18 A. Yes, sir. Primarily most -- I would say most  19 of their product is Asian origin.  20 Q. In fact, do buyers in Asia buy Asian origin  21 MX?  22 A. Yes, sir.  23 Q. They do that all the time?  24 A. All the time.  25 Q. Do traders in Asia trade on Asian origin MX?</p>

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<p style="text-align: right;">492</p> <p>1     <b>A. Yes, sir.</b></p> <p>2     Q. Mr. Simpson, in your opinion what would happen</p> <p>3     to the petrochemicals trading industry if the Tricon</p> <p>4     Vinmar deal in this case is not enforceable?</p> <p>5     <b>A. Then most of the deals that we do would not be</b></p> <p>6     <b>enforceable.</b></p> <p>7     <b>MR. DIAZ-ARRASTIA: Pass the witness.</b></p> <p>8     JUDGE BENTON: Mr. Lee?</p> <p>9     MR. LEE: Yes. Thank you.</p> <p>10    CROSS-EXAMINATION (2:40 p.m.)</p> <p>11    BY MR. LEE:</p> <p>12    Q. Mr. Simpson, how are you today?</p> <p>13    <b>A. Good, sir. You?</b></p> <p>14    Q. You and I have never met. Right?</p> <p>15    <b>A. No, sir.</b></p> <p>16    Q. Let me ask you a couple of questions. I may</p> <p>17    jump around a little bit. But you had -- in the Joint</p> <p>18    Exhibit notebook, you were asked about Joint Exhibit</p> <p>19    No. 8, which was an e-mail exchange between Mr. Wilson</p> <p>20    and a gentleman by the name of Eduardo Anaya. Correct?</p> <p>21    <b>A. Yes, sir.</b></p> <p>22    Q. Now, just to be clear about all this, I think</p> <p>23    it's obvious but I should ask you a couple of questions</p> <p>24    for the record. You weren't involved in the</p> <p>25    negotiations of this transaction that we're talking</p>	<p style="text-align: right;">494</p> <p>1     Q. You don't know that, though, do you?</p> <p>2     <b>A. No. I don't know their system.</b></p> <p>3     Q. I mean, he asked for port of origin. Correct?</p> <p>4     <b>A. Right.</b></p> <p>5     Q. Okay. And so it's very possible that what</p> <p>6     Mr. Wilson was responding to is that he didn't know what</p> <p>7     port it was going to be loaded from. Correct?</p> <p>8     <b>A. Could be.</b></p> <p>9     Q. Okay. It is common for people in the industry</p> <p>10    to use brokers to trade petrochemicals. Correct?</p> <p>11    <b>A. Yes, sir.</b></p> <p>12    Q. And you would agree with me that in order for</p> <p>13    there to be a deal between the parties, the firm bid</p> <p>14    must match precisely the firm offer. Correct?</p> <p>15    <b>A. Yes, sir.</b></p> <p>16    Q. And if the broker tells two parties that they</p> <p>17    have a deal but the firm bid did not match the firm</p> <p>18    offer, then the broker's wrong. Correct?</p> <p>19    <b>A. Correct.</b></p> <p>20    Q. There is no deal on that situation. Correct?</p> <p>21    <b>A. Depending on what the term was or what you</b></p> <p>22    <b>were talking about.</b></p> <p>23    Q. Well, if it's in the firm bid and it doesn't</p> <p>24    match the firm offer, there's no deal. Right?</p> <p>25    <b>A. That I don't know. That's something legal.</b></p>
<p style="text-align: right;">493</p> <p>1     about. Correct?</p> <p>2     <b>A. No, sir.</b></p> <p>3     Q. And you don't know Mr. Wilson, do you?</p> <p>4     <b>A. No, never met him.</b></p> <p>5     Q. You don't know Eduardo Anaya, do you?</p> <p>6     <b>A. No, sir.</b></p> <p>7     Q. Now, you do know that this e-mail exchange is</p> <p>8     an e-mail exchange internal at Vinmar. Correct?</p> <p>9     <b>A. Yes, sir.</b></p> <p>10    Q. Okay. You testified that there was a</p> <p>11    difference between origin and load port?</p> <p>12    <b>A. Yes, sir.</b></p> <p>13    Q. Right?</p> <p>14    <b>A. Yes, sir.</b></p> <p>15    Q. That means two different things. Correct?</p> <p>16    <b>A. Yes, sir.</b></p> <p>17    Q. Okay. Now, if we look at the e-mail from</p> <p>18    Mr. Anaya to Mr. Wilson, he asked Mr. Wilson at the</p> <p>19    bottom of the page, "To complete the order, we need the</p> <p>20    port of origin." Correct?</p> <p>21    <b>A. Yes, sir.</b></p> <p>22    Q. Now, you don't know whether he meant the</p> <p>23    origin of the product or the port of loading, do you?</p> <p>24    <b>A. I would assume he's talking about the origin</b></p> <p>25    <b>of the product.</b></p>	<p style="text-align: right;">495</p> <p>1     Q. Well, I'm just asking your understanding in</p> <p>2     the industry. If you in a firm bid say, "This is what I</p> <p>3     want," and the firm offer on the other side doesn't</p> <p>4     match the firm bid precisely, then you don't have a</p> <p>5     deal, do you, sir?</p> <p>6     <b>A. Probably wouldn't.</b></p> <p>7     Q. And the broker shouldn't put two parties</p> <p>8     together like that. Correct?</p> <p>9     <b>A. He probably wouldn't.</b></p> <p>10    Q. Okay. And if he does, he exceeded his</p> <p>11    authority, did he not?</p> <p>12    <b>A. He did.</b></p> <p>13    Q. Okay. It's possible -- you know brokers make</p> <p>14    mistakes. Right?</p> <p>15    <b>A. Yes, sir.</b></p> <p>16    Q. That's one of the reasons they put in their</p> <p>17    broker confirmation, "If anything in this confirmation</p> <p>18    is contrary to your understanding, please let me know"?</p> <p>19    <b>A. Uh-huh.</b></p> <p>20    Q. And, in fact, we know in this deal that</p> <p>21    Mr. Leyman made a mistake, at least one. Right?</p> <p>22    <b>A. No.</b></p> <p>23    Q. Oh, we know he made at least one mistake,</p> <p>24    didn't he?</p> <p>25    <b>A. No. He made two.</b></p>



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<p style="text-align: right;">496</p> <p>1 Q. Two?</p> <p>2 A. I think the -- whoever typed it up got it</p> <p>3 wrong.</p> <p>4 Q. Well, we know he made one mistake for sure.</p> <p>5 Correct?</p> <p>6 A. Which was?</p> <p>7 Q. He got the price wrong.</p> <p>8 A. Okay.</p> <p>9 Q. You know that. Right?</p> <p>10 A. Well, he corrected it, yes.</p> <p>11 Q. Okay. But when he originally wrote his notes,</p> <p>12 he got the price wrong. It was a -- it was a million</p> <p>13 dollar mistake?</p> <p>14 A. Okay.</p> <p>15 Q. Do you recall that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So, I mean, it happens that brokers</p> <p>18 make mistakes?</p> <p>19 A. Yes.</p> <p>20 Q. Do you -- did you believe that a broker has</p> <p>21 the responsibility to ensure that the parties have a</p> <p>22 clear understanding of what the terms are that he says</p> <p>23 they agreed to?</p> <p>24 A. Say that again, please.</p> <p>25 Q. Do you believe that a broker has a</p>	<p style="text-align: right;">498</p> <p>1 Q. Okay. And you've seen this before?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And is it your understanding that</p> <p>4 while there were some instant message exchanges on the</p> <p>5 morning of July 22nd between Mr. Leyman and Mr. Lockwood</p> <p>6 on one hand and Mr. Wilson or Dr. Wilson and Mr. Leyman</p> <p>7 on the other that ultimately the deal that Mr. Leyman</p> <p>8 claims he brokered was done over the phone?</p> <p>9 A. I believe he probably finalized it over the</p> <p>10 phone.</p> <p>11 Q. And you haven't seen --</p> <p>12 A. You don't see it in here.</p> <p>13 Q. That was my question. You don't see anywhere</p> <p>14 in these instant messages where Mr. Leyman has captured</p> <p>15 all of the terms of what he believes the deal was.</p> <p>16 Correct?</p> <p>17 A. No.</p> <p>18 Q. Okay. And you do know that mister -- or</p> <p>19 Dr. Wilson and Mr. Lockwood never spoke on July 22nd,</p> <p>20 2008?</p> <p>21 A. Correct. I never saw that in anything.</p> <p>22 Q. Now, was it -- is it your recollection that</p> <p>23 Mr. Leyman told Mr. Lockwood somewhere around</p> <p>24 12:00 o'clock in the afternoon or July 22nd that a deal</p> <p>25 had been completed?</p>
<p style="text-align: right;">497</p> <p>1 responsibility to ensure that the parties have a clear</p> <p>2 understanding of the terms that he believes they agreed</p> <p>3 to?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And do you have -- do you also think the</p> <p>6 broker has the responsibility to correct someone if they</p> <p>7 have a misunderstanding about the terms that he believes</p> <p>8 he's negotiated?</p> <p>9 A. I believe they do.</p> <p>10 Q. Okay. Is it -- is it your understanding of</p> <p>11 this transaction between Vinmar and Tricon that Tricon</p> <p>12 was not required to load this product from any specific</p> <p>13 location?</p> <p>14 A. Right.</p> <p>15 Q. So they could load it from wherever they</p> <p>16 wanted to. Correct?</p> <p>17 A. (Nods head)</p> <p>18 Q. Is that --</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Would you flip to Joint Exhibit No. 11,</p> <p>21 please, sir? And you've seen these documents. Correct?</p> <p>22 These -- this is the instant message exchange between</p> <p>23 Mr. Wilson and Mr. Leyman. The first page is the</p> <p>24 conversation on July 22nd, 2008. Correct?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">499</p> <p>1 A. I don't remember what the time was. I just</p> <p>2 remember there was a notation in the instant messages</p> <p>3 where he said "Deal done" or something like that.</p> <p>4 Q. Okay. Keep your finger on that. Just flip to</p> <p>5 the exhibit right in front of it, which is Joint Exhibit</p> <p>6 No. 10.</p> <p>7 A. Okay.</p> <p>8 Q. And this should be the instant messages</p> <p>9 between Mr. Lockwood and Mr. Leyman. Correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you've seen those before?</p> <p>12 A. Yes.</p> <p>13 Q. And if we go to the third page of exhibit --</p> <p>14 Joint Exhibit No. 10, which at the right-hand corner is</p> <p>15 MOAB 6.</p> <p>16 A. Yes, sir.</p> <p>17 Q. At 12:08:59 p.m. Mr. Leyman says, "Will be</p> <p>18 done calling." And then at 12:09:39 p.m. Mr. Leyman</p> <p>19 says to Mr. Lockwood, "All done but call me."</p> <p>20 Okay. Now, is it your understanding that</p> <p>21 at that point the transaction was concluded?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. And that transaction, as you understood it,</p> <p>24 did not require Tricon to load out of any specific</p> <p>25 location. Correct?</p>

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<p style="text-align: right;">500</p> <p>1       <b>A. No, sir, it did not.</b></p> <p>2       Q. Joint 11 -- Joint Exhibit No. 11 then, as you</p> <p>3       said, are the e-mails -- or the instant messages between</p> <p>4       Dr. Wilson and Mr. Leyman. And at 12:57:20 p.m. -- so</p> <p>5       that's after Mr. Leyman has told Mr. Lockwood a deal is</p> <p>6       done. Correct?</p> <p>7       <b>A. At 12:57. Okay.</b></p> <p>8       Q. You see that?</p> <p>9       And what Mr. Wilson asked at 12:57, he</p> <p>10      says, "Ed, given that Brad is selling out of U.S. Gulf</p> <p>11      Coast, am I getting 45 days from BL or 30, hopefully</p> <p>12      45." Do you see that?</p> <p>13      <b>A. Yes, sir.</b></p> <p>14      Q. Now, you understand that the question that's</p> <p>15      being asked there is since the product is being loaded</p> <p>16      out of the U.S. Gulf Coast, can I have 45 days from the</p> <p>17      bill of lading to pay the invoice because it's going to</p> <p>18      take about that long to get over there? That's what</p> <p>19      that question means. Right?</p> <p>20      <b>A. He's asking about changing the payment terms.</b></p> <p>21      Q. Correct. Because that's how long it's going</p> <p>22      to take to get from the U.S. Gulf Coast to Asia.</p> <p>23      <b>A. It takes about 40, 45 days.</b></p> <p>24      Q. Right. And he would not want to pay the</p> <p>25      invoice until he could have a chance to sell the product</p>	<p style="text-align: right;">502</p> <p>1       different places just to see if this refreshes your</p> <p>2       memory or not. Joint Exhibit No. 7. So, Mr. Simpson, I</p> <p>3       think that's the -- not that one. That one, yes, sir,</p> <p>4       right there.</p> <p>5       <b>A. This one?</b></p> <p>6       Q. Yes, sir.</p> <p>7       <b>A. No. 7. Okay.</b></p> <p>8       Q. Here's some of the SAP data. Do you recall</p> <p>9       reviewing this information?</p> <p>10      <b>A. I remember seeing it. Your copy is much</b></p> <p>11      <b>better than mine.</b></p> <p>12      Q. Okay. I just -- I just want to know if you</p> <p>13      recalled seeing it or not.</p> <p>14      <b>A. Yes, I -- yes, I saw it.</b></p> <p>15      Q. And that -- do those documents play any role</p> <p>16      in your opinion here today?</p> <p>17      <b>A. No, they probably don't.</b></p> <p>18      Q. If Vinmar's documentations showed that they</p> <p>19      believed the country of origin was USA, would that have</p> <p>20      any bearing on your opinion as to what the deal terms</p> <p>21      were?</p> <p>22      <b>A. Well, I know they believed they had that.</b></p> <p>23      Q. So that would be consistent with your</p> <p>24      understanding of Vinmar's position. Correct?</p> <p>25      <b>A. Yes, sir.</b></p>
<p style="text-align: right;">501</p> <p>1       on the other end. And that would be the best case</p> <p>2       scenario?</p> <p>3       <b>A. That's the best case scenario, yes.</b></p> <p>4       Q. Okay. Now, you don't see where Mr. Leyman</p> <p>5       corrected Rick Wilson's statement about selling out of</p> <p>6       the U.S. Gulf Coast, do you?</p> <p>7       <b>A. No.</b></p> <p>8       Q. Okay. But that's not -- you didn't understand</p> <p>9       the deal to be a requirement that they sell out of the</p> <p>10      U.S. Gulf Coast. Right?</p> <p>11      <b>A. Correct, I did not.</b></p> <p>12      Q. Did you -- I see in the -- in the documents</p> <p>13      that you obtained in this case or the documents that you</p> <p>14      reviewed that you did obtain and review copies of</p> <p>15      Vinmar's SAP data. Did you remember doing that? Take a</p> <p>16      look at --</p> <p>17      <b>A. I'm not sure I did.</b></p> <p>18      Q. Okay. Well, it's in the -- it's in the</p> <p>19      statement. In your report, there's a series of</p> <p>20      documents reviewed and that would include the documents</p> <p>21      containing Vinmar's SAP computer-generated data. Do you</p> <p>22      remember looking at that?</p> <p>23      <b>A. I probably did. You might have to refresh my</b></p> <p>24      <b>memory.</b></p> <p>25      Q. Okay. Well, one -- we can look at a couple of</p>	<p style="text-align: right;">503</p> <p>1       Q. You said that you had never signed a contract</p> <p>2       on a spot deal. Is that correct?</p> <p>3       <b>A. Yes.</b></p> <p>4       Q. But you have signed what you call long-term</p> <p>5       deals, something that's a year or longer?</p> <p>6       <b>A. Usually a year or longer.</b></p> <p>7       Q. Can -- but you do know that you've seen a lot</p> <p>8       of different terms and conditions and paper in the</p> <p>9       industry. Most of those contain signature blanks.</p> <p>10      Correct?</p> <p>11      <b>A. I'll say most of the aromatics don't.</b></p> <p>12      Q. They don't contain signature blanks?</p> <p>13      <b>A. Not that I -- most of them.</b></p> <p>14      Q. Right.</p> <p>15      <b>A. The definition of most of them is probably the</b></p> <p>16      <b>tough part.</b></p> <p>17      Q. Okay. More than three --</p> <p>18      <b>A. I would say the majority of them do not</b></p> <p>19      <b>contain signature blanks. I can just tell you Valero's</b></p> <p>20      <b>never did.</b></p> <p>21      Q. Valero's never even had a place for somebody</p> <p>22      to sign. Correct?</p> <p>23      <b>A. No, sir.</b></p> <p>24      Q. You said that if there was a mistake in a</p> <p>25      trade and somebody became aware of it that it wouldn't</p>

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<p style="text-align: right;">504</p> <p>1 take them -- it wouldn't take an ops person more than 30</p> <p>2 seconds to get ahold of a trader?</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 Q. Okay. Now, that of course is assuming that</p> <p>5 the trader is available. Right?</p> <p>6 <b>A. Assuming they're available. They're going to</b></p> <p>7 <b>try to find out where they are if they're not there. If</b></p> <p>8 <b>it's in the middle of the night, they'll try to do that.</b></p> <p>9 <b>They'll get ahold of him as soon as possible.</b></p> <p>10 Q. Right. They'll get ahold of him as soon as</p> <p>11 possible?</p> <p>12 <b>A. And it's usually immediately.</b></p> <p>13 Q. And if the trader is not available, then as</p> <p>14 soon as possible may take some time. Right?</p> <p>15 <b>A. It could.</b></p> <p>16 Q. So is it your opinion that the -- you</p> <p>17 testified that you believe that a deal had been done. I</p> <p>18 just want to make sure I understand. It's your opinion</p> <p>19 that a deal was done on July 22nd, 2008?</p> <p>20 <b>A. Yes, I believe that's the date.</b></p> <p>21 Q. And did -- you reviewed the broker</p> <p>22 confirmation, which was Joint Exhibit No. 4. Correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And is it your understanding that that</p> <p>25 document -- did that document accurately reflect the</p>	<p style="text-align: right;">506</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Okay. And you've actually told us this</p> <p>3 afternoon that you've done deals where there was no</p> <p>4 paper other than this confirmation because people didn't</p> <p>5 agree?</p> <p>6 <b>A. They didn't agree upon general terms and</b></p> <p>7 <b>conditions.</b></p> <p>8 Q. Right. So there was no other paper than this</p> <p>9 confirmation?</p> <p>10 <b>A. What I'm trying to say is I will do a deal.</b></p> <p>11 <b>You've got to get it in a con -- and I'm using Valero.</b></p> <p>12 <b>You have to get in the contract system so you have to</b></p> <p>13 <b>send something down there that gets it in the system and</b></p> <p>14 <b>then that releases the barrels for the refineries or the</b></p> <p>15 <b>terminal or whoever to release the barrels.</b></p> <p>16 <b>So something came through, but we didn't</b></p> <p>17 <b>pass paper. We didn't get paper from each party. We</b></p> <p>18 <b>might not have got paper from a broker if you're using a</b></p> <p>19 <b>broker.</b></p> <p>20 Q. Okay. So there are a variety of different</p> <p>21 ways that a deal may be done and ultimately performed?</p> <p>22 <b>A. Right.</b></p> <p>23 Q. It's your opinion that a broker earns his</p> <p>24 commission when he concludes a deal. Correct?</p> <p>25 <b>A. Yes, sir.</b></p>
<p style="text-align: right;">505</p> <p>1 agreement as you understand it?</p> <p>2 <b>A. That's what I understood.</b></p> <p>3 Q. Is it your understanding that all of the terms</p> <p>4 that were included in Joint Exhibit No. 4 had been</p> <p>5 discussed and agreed to by the parties?</p> <p>6 <b>A. By both parties?</b></p> <p>7 Q. Yes, sir.</p> <p>8 <b>A. Yes. That's what was in Ed Leyman's</b></p> <p>9 <b>deposition. Do you remember if origin was included? He</b></p> <p>10 <b>said it wasn't.</b></p> <p>11 Q. Okay. But my -- I guess my question was a</p> <p>12 little different. I just want to --</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. -- make sure I understand. The document,</p> <p>15 Joint Exhibit No. 4, it's your opinion that that</p> <p>16 document included all the terms that the parties had</p> <p>17 agreed to?</p> <p>18 <b>A. Well, there's other terms and conditions that</b></p> <p>19 <b>they agreed to later, yes.</b></p> <p>20 Q. Well, but is this document --</p> <p>21 <b>A. The pertinent ones. The pertinent ones --</b></p> <p>22 Q. And you've --</p> <p>23 <b>A. -- that conclude a deal. In my mind that</b></p> <p>24 <b>conclude a deal.</b></p> <p>25 Q. Right here, Joint Exhibit No. 4?</p>	<p style="text-align: right;">507</p> <p>1 Q. When he -- when he puts a firm bid with a firm</p> <p>2 offer, the broker has earned his commission?</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 Q. And he should be paid for that commission.</p> <p>5 Correct?</p> <p>6 <b>A. Yes, sir.</b></p> <p>7 Q. Did you know that Tricon had been sent a</p> <p>8 commission invoice by MOAB?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Did you know they didn't pay it?</p> <p>11 <b>A. No.</b></p> <p>12 Q. They don't have any intent of paying it?</p> <p>13 <b>MR. DIAZ-ARRASTIA: I object that that</b></p> <p>14 <b>clearly mistakes Mr. Lockwood's testimony.</b></p> <p>15 <b>MR. LEE: I'm sorry. Let me --</b></p> <p>16 <b>JUDGE BENTON: It's overruled. The panel</b></p> <p>17 <b>remembers the testimony.</b></p> <p>18 Q. (BY MR. LEE) Tricon has postponed --</p> <p>19 <b>MR. DIAZ-ARRASTIA: I don't think it</b></p> <p>20 <b>misleads the witness.</b></p> <p>21 <b>MR. LEE: And I'll withdraw the question</b></p> <p>22 <b>and I'll ask it again.</b></p> <p>23 Q. (BY MR. LEE) The testimony was that the</p> <p>24 payment of the invoice has been postponed?</p> <p>25 <b>A. I didn't --</b></p>

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<p>1 Q. Are you aware of that?</p> <p>2 <b>A. No, I didn't know that.</b></p> <p>3 Q. Do you see anything in the broker confirmation</p> <p>4 or have you seen any documents in this case that</p> <p>5 would -- that state an agreement between MOAB and Tricon</p> <p>6 that Tricon has the right to postpone paying the</p> <p>7 commission until somebody performs?</p> <p>8 <b>A. It doesn't say it in the agreement, no.</b></p> <p>9 Q. Did -- were you aware that Mr. Leyman did not</p> <p>10 send a commission invoice to Vinmar?</p> <p>11 <b>A. No, sir.</b></p> <p>12 Q. Wouldn't that be a comment on what he thought</p> <p>13 about whether the deal was final or not?</p> <p>14 <b>A. I can't say what he thought -- what he thought</b></p> <p>15 <b>about sending out an invoice or not.</b></p> <p>16 MR. LEE: I'll pass the witness.</p> <p>17 JUDGE BENTON: Anything else,</p> <p>18 Mr. Diaz-Arrastia?</p> <p>19 MR. DIAZ-ARRASTIA: I have just a couple</p> <p>20 of questions.</p> <p>21 REDIRECT EXAMINATION (2:58 p.m.)</p> <p>22 BY MR. DIAZ-ARRASTIA:</p> <p>23 Q. Mr. Simpson, Mr. Lee asked you a little bit</p> <p>24 about, you know, the scheduler or ops specialist trying</p> <p>25 to get ahold of his trader --</p>	<p>1 JUDGE DAVIDSON: One second. We need to</p> <p>2 take a break.</p> <p>3 JUDGE BENTON: We'll just take a -- let's</p> <p>4 just take a ten-minute break here.</p> <p>5 MR. DIAZ-ARRASTIA: Okay.</p> <p>6 (Recess from 3:00 p.m. to 3:16 p.m.)</p> <p>7 JUDGE BENTON: We're back on the record.</p> <p>8 We'll break this evening about 4:45, 4:50 at the latest.</p> <p>9 Okay?</p> <p>10 MR. DIAZ-ARRASTIA: Okay.</p> <p>11 JUDGE BENTON: All right. With that, you</p> <p>12 were in the middle of a question, I believe.</p> <p>13 MR. DIAZ-ARRASTIA: Yes, I was.</p> <p>14 JUDGE BENTON: You may proceed.</p> <p>15 Q. (BY MR. DIAZ-ARRASTIA) And let me get back to</p> <p>16 that. Okay. Mr. Simpson, I was calling your attention</p> <p>17 to Joint Exhibit 11 and the entry at 12:57:20 where</p> <p>18 Mr. Wilson says, "Ed, given Brad is selling out of USG,</p> <p>19 am I getting 45 days from BL or 30?"</p> <p>20 I think the question that I was asking you</p> <p>21 at the very moment that we broke was whether you had an</p> <p>22 opportunity to review Mr. Lockwood's deposition in this</p> <p>23 case.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And is it your understanding that</p>
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<p>1 <b>A. Yes.</b></p> <p>2 Q. -- and what happens if the trader is not</p> <p>3 available.</p> <p>4 How long does it take to send an e-mail to</p> <p>5 your trader?</p> <p>6 <b>A. Ten seconds, 15 seconds.</b></p> <p>7 Q. Okay. Now, let's take a look at Joint</p> <p>8 Exhibit 11, those IM's that Mr. Lee was questioning you</p> <p>9 about.</p> <p>10 <b>A. No. 11, Joint Exhibit?</b></p> <p>11 Q. Joint Exhibit No. 11, and in particular the</p> <p>12 line at 12:57:20 where Mr. Wilson is saying, "Given Brad</p> <p>13 is selling out of USG."</p> <p>14 <b>A. I'm not there.</b></p> <p>15 Q. 12:57:20.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. Have you found it?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Do you remember that Mr. Lee questioned you</p> <p>20 about that for a little while?</p> <p>21 <b>A. Yes, sir.</b></p> <p>22 Q. Now, you have also read Mr. Lockwood's</p> <p>23 deposition in this case, have you not, sir?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And is it your understanding that after --</p>	<p>1 Mr. Lockwood's testimony has been that after the deal</p> <p>2 was made Mr. Leyman asked him where he was likely to get</p> <p>3 his supply, and that his response was, "Most likely from</p> <p>4 the U.S. Gulf."</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. So that is very consistent with what statement</p> <p>7 that Mr. Lockwood made, "Most likely U.S. Gulf"?</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. But as I think we established a moment ago, is</p> <p>10 mostly likely U.S. Gulf a guarantee of U.S. origin?</p> <p>11 <b>A. No, sir.</b></p> <p>12 Q. And anyone who is experienced in the industry</p> <p>13 would understand that?</p> <p>14 <b>A. Yes, sir.</b></p> <p>15 Q. Let me ask you another thing, sir. We talked</p> <p>16 a little bit about -- I can't remember what the exhibit</p> <p>17 number was. It was that e-mail between Mr. Anaya and</p> <p>18 Mr. Wilson.</p> <p>19 I'll tell you what. We'll just look at</p> <p>20 J 11. We don't have to see it, but I just want to ask</p> <p>21 you this question, sir. In your opinion as someone who</p> <p>22 has been, what, more than 20 years in the industry and</p> <p>23 been an active trader, would someone with experience in</p> <p>24 the petrochemical industry -- in the petrochemical</p> <p>25 trading industry use the word "origin" when they really</p>



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<p>1 meant load port?</p> <p>2 <b>A. No, sir.</b></p> <p>3 <b>MR. DIAZ-ARRASTIA: I pass the witness.</b></p> <p>4 JUDGE BENTON: Mr. Lee?</p> <p>5 MR. LEE: Just a couple of quick</p> <p>6 questions.</p> <p>7 RECROSS-EXAMINATION (3:18 p.m.)</p> <p>8 BY MR. LEE:</p> <p>9 Q. Did you read Dr. Wilson's testimony on that</p> <p>10 e-mail?</p> <p>11 <b>A. Yes, sir.</b></p> <p>12 Q. You know what he said about it. Right?</p> <p>13 <b>A. Yes, sir.</b></p> <p>14 Q. And he said he was answering the question</p> <p>15 about the port of load. Correct?</p> <p>16 <b>A. I understood that.</b></p> <p>17 Q. You just don't believe that he -- that that's</p> <p>18 really what he meant?</p> <p>19 <b>A. No. I was just reading what he said.</b></p> <p>20 Q. Okay. That's your interpretation of what he</p> <p>21 meant --</p> <p>22 <b>A. That's my interpretation.</b></p> <p>23 Q. We have his testimony as to what he meant when</p> <p>24 he wrote it. Correct?</p> <p>25 <b>A. Yes.</b></p>	<p>1 MR. LEE: I'll pass the witness.</p> <p>2 (The time is 3:19 p.m.)</p> <p>3 JUDGE BENTON: Mr. Diaz-Arrastia?</p> <p>4 MR. DIAZ-ARRASTIA: Nothing further.</p> <p>5 JUDGE BENTON: Call your next witness.</p> <p>6 MR. DIAZ-ARRASTIA: May he be excused?</p> <p>7 JUDGE BENTON: Yeah, you may be excused,</p> <p>8 sir.</p> <p>9 MR. SIMPSON: Okay. Thanks.</p> <p>10 MR. DIAZ-ARRASTIA: Mr. Lee and I were</p> <p>11 talking during the break about the manner of proceeding</p> <p>12 with the rest of the case, and this is what we would</p> <p>13 like to do.</p> <p>14 My next witness was going to be Chuck</p> <p>15 Matthews who's our -- the person who calculated our</p> <p>16 damages for us. He has submitted a report which you</p> <p>17 have seen in advance and it is also in the exhibit book</p> <p>18 that's Tricon Exhibit -- I think it's 39. Is it 39?</p> <p>19 Yes, Tricon Exhibit 39 with a couple of</p> <p>20 additions. His CV is Tricon Exhibit 40. And very</p> <p>21 quickly the -- and there is also some -- there it is.</p> <p>22 There is some information that he relied on to make one</p> <p>23 of his schedules, information that he had taken from</p> <p>24 Platts, which is Tricon Exhibit 33, and that's what</p> <p>25 backs up one of the schedules in his report.</p>
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<p>1 Q. A couple of quick questions. Joint Exhibit</p> <p>2 No. 10, which are these instant messages between</p> <p>3 Mr. Lockwood and Mr. Leyman, if you'll go to MOAB 12,</p> <p>4 which is July 31, 2008.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. Did you investigate why Tricon was in the</p> <p>7 market to buy mixed xylenes on July 31st, 2008?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Okay. But did you know that they were in the</p> <p>10 market to buy mixed xylenes on July 31st?</p> <p>11 <b>A. From this, yes.</b></p> <p>12 Q. Okay. And what Mr. Lockwood had suggested to</p> <p>13 Mr. Leyman on July 31, 2008, is maybe you can work a</p> <p>14 cheap book out for me with Vinmar. Right?</p> <p>15 <b>A. Yes, sir.</b></p> <p>16 Q. In other words, do a paper transaction.</p> <p>17 Correct?</p> <p>18 <b>A. Yes, sir.</b></p> <p>19 Q. Trading companies don't make the product.</p> <p>20 Right?</p> <p>21 <b>A. No, sir.</b></p> <p>22 Q. So like Tricon doesn't make mixed xylenes?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. They have to buy it to deliver it. Correct?</p> <p>25 <b>A. Yes, sir.</b></p>	<p>1 We have agreed that for our damages</p> <p>2 evidence we would submit the report and Mr. Matthews</p> <p>3 will not testify live. All that I would do would be</p> <p>4 have him walk the panel through the report and we can</p> <p>5 get the panel to read it, and Mr. Lee is in agreement</p> <p>6 with that.</p> <p>7 JUDGE BENTON: Let's see. Judge Woods</p> <p>8 probably graduated with an economics, I'm a CPA and</p> <p>9 Judge Davis knows everything.</p> <p>10 JUDGE DAVIDSON: I was -- I was a math</p> <p>11 major.</p> <p>12 MR. DIAZ-ARRASTIA: I'm sure you could</p> <p>13 handle it very well.</p> <p>14 MR. LEE: And just to be clear, obviously</p> <p>15 we don't agree with the report, but we -- I agree that</p> <p>16 that's what he would testify to. And I think rather</p> <p>17 than spending an hour having him do that that we might</p> <p>18 be able to speed this up.</p> <p>19 MR. DIAZ-ARRASTIA: The --</p> <p>20 JUDGE WOOD: And so, therefore, your</p> <p>21 closing -- I'm sorry.</p> <p>22 MR. DIAZ-ARRASTIA: Well, not --</p> <p>23 JUDGE WOOD: If I could ask a question.</p> <p>24 Therefore, your closing remarks are you would sum up</p> <p>25 with how you interpret his report and we would hear from</p>

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<p style="text-align: right;">516</p> <p>1 Mr. Lee as to his comments?</p> <p>2 MR. DIAZ-ARRASTIA: I suppose we could</p> <p>3 both do that.</p> <p>4 JUDGE WOOD: Thank you.</p> <p>5 MR. DIAZ-ARRASTIA: The other evidence</p> <p>6 that I would have to present is we do have a claim for</p> <p>7 attorneys' fees. We had an agreement before the hearing</p> <p>8 that the attorneys' fee evidence would be submitted in</p> <p>9 writing.</p> <p>10 The panel already has a copy of my</p> <p>11 attorneys' fee invoices in this matter through the month</p> <p>12 of August. I will prepare a report updating it through</p> <p>13 the end of the hearing and going into perhaps any</p> <p>14 enforcement proceedings.</p> <p>15 We talked about dates during the break.</p> <p>16 Mr. Lee is going to be out of town next week so I think</p> <p>17 where we ended up is that I would prepare -- present the</p> <p>18 report to the panel by August the 30th and he would --</p> <p>19 I'm sorry, September the 30th, and he would give</p> <p>20 whatever response in writing by the 8th of October, if</p> <p>21 that's okay with the panel.</p> <p>22 JUDGE BENTON: The 8th of what?</p> <p>23 MR. DIAZ-ARRASTIA: October.</p> <p>24 JUDGE BENTON: Well, let me ask you a</p> <p>25 question. We have not yet talked about closing</p>	<p style="text-align: right;">518</p> <p>1 into that, the final bit of evidence would be in our</p> <p>2 cause we have also agreed the deposition of Mr. Gary</p> <p>3 Cofran, who is Vinmar's expert, would be submitted in</p> <p>4 evidence in its entirety. However, I would -- I have</p> <p>5 maybe about ten minutes of some sections that I would</p> <p>6 like to read to the panel to highlight them.</p> <p>7 Once I do that, my case would rest. And I</p> <p>8 think that Mr. Lee then has Mr. Pascu who will testify.</p> <p>9 And I think then we would be done with the evidence.</p> <p>10 JUDGE DAVIDSON: Okay. I just want to</p> <p>11 make sure -- well, two things. First of all, some of</p> <p>12 how we proceed depends upon whether y'all wanted a</p> <p>13 reasoned ruling or a ruling and -- you know, and we</p> <p>14 asked y'all to let us know by the time you close and I</p> <p>15 haven't -- I haven't heard an answer yet.</p> <p>16 MR. DIAZ-ARRASTIA: No. I don't think we</p> <p>17 have given you one.</p> <p>18 JUDGE BENTON: Yeah, but that's okay</p> <p>19 because the record --</p> <p>20 MR. DIAZ-ARRASTIA: We have not discussed</p> <p>21 that.</p> <p>22 MR. LEE: We haven't huddled on that.</p> <p>23 JUDGE BENTON: But that's okay because for</p> <p>24 Triple A rules the record will not be closed until we</p> <p>25 get the last piece of paper there -- that is due us,</p>
<p style="text-align: right;">517</p> <p>1 arguments. Do you contemplate making closing arguments</p> <p>2 orally or do you prefer to make them in writing?</p> <p>3 MR. DIAZ-ARRASTIA: Well, I have a closing</p> <p>4 argument prepared, but we also discussed that and we</p> <p>5 decided to ask you what you would want to hear since</p> <p>6 you're the ones who matter.</p> <p>7 JUDGE WOOD: Let's hear from Mr. Lee.</p> <p>8 MR. LEE: Well, I would -- there's a</p> <p>9 couple of things on that. I certainly think that it</p> <p>10 would be beneficial to the panel if we presented some</p> <p>11 briefing on some of the legal issues, particularly the</p> <p>12 damages, if that's informative to the panel.</p> <p>13 And so whether -- I'd like to make a</p> <p>14 closing argument, but if you don't find that useful we</p> <p>15 can do it in the legal submissions.</p> <p>16 JUDGE BENTON: Well, you know what? Just</p> <p>17 one second. I have on each day we've been here talked</p> <p>18 to the court reporter and I am informed that -- my</p> <p>19 understanding is that you are going to get the record</p> <p>20 from the court reporter in the normal course of events</p> <p>21 once the evidence kindly closes.</p> <p>22 If it would help you to have the evidence</p> <p>23 to prepare closing and writing me, that might help, but</p> <p>24 give us a second to huddle. Why don't we take --</p> <p>25 MR. DIAZ-ARRASTIA: One -- before we go</p>	<p style="text-align: right;">519</p> <p>1 whether that be the briefing or whatever it is.</p> <p>2 So, I mean, if we leave here today or</p> <p>3 tomorrow, that doesn't start the clock running.</p> <p>4 JUDGE DAVIDSON: I know that. As long as</p> <p>5 y'all know that the effect of --</p> <p>6 MR. DIAZ-ARRASTIA: I understand a</p> <p>7 reasoned ruling takes more work.</p> <p>8 JUDGE DAVIDSON: Yes.</p> <p>9 MR. DIAZ-ARRASTIA: A lot more work.</p> <p>10 JUDGE DAVIDSON: Perhaps.</p> <p>11 MR. DIAZ-ARRASTIA: Perhaps.</p> <p>12 MR. LEE: I certainly appreciate that.</p> <p>13 We'll -- let us talk about that.</p> <p>14 JUDGE DAVIDSON: Okay. We're going to go</p> <p>15 huddle. You're going to talk about that.</p> <p>16 MR. LEE: Can I make one other suggestion?</p> <p>17 JUDGE DAVIDSON: Sure.</p> <p>18 MR. LEE: I have done a couple of</p> <p>19 arbitrations where we have finished the evidence, gotten</p> <p>20 the record, submitted briefing and then had a closing</p> <p>21 argument, both evidentiary and legal, and answered</p> <p>22 whatever questions the panel have. We certainly could</p> <p>23 do that if you wanted to. It just depends on what the</p> <p>24 panel wants.</p> <p>25 MR. DIAZ-ARRASTIA: Fine.</p>

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<p style="text-align: right;">520</p> <p>1 MR. LEE: I'm prepared to do a closing 2 or -- 3 JUDGE BENTON: Okay. Give us three 4 minutes. And we're off the record, of course. 5 (Recess from 3:26 p.m. to 3:35 p.m.) 6 JUDGE BENTON: We're back on the record. 7 Let's see here. What are you giving us on 8 the 30th? 9 MR. DIAZ-ARRASTIA: What I would give you 10 on the 30th is a report on my attorneys' fees. 11 JUDGE BENTON: Okay. 12 MR. DIAZ-ARRASTIA: And as I said, you 13 already have in Tricon Exhibit 37 all my bills in this 14 case through -- 15 MS. LARSON: 37 and 38. 16 MR. DIAZ-ARRASTIA: Oh, 37 and 38. I'm 17 sorry. 18 JUDGE BENTON: Okay. 19 MR. DIAZ-ARRASTIA: You have all of those 20 through actually -- 21 JUDGE BENTON: Well, yeah. I -- 22 MR. DIAZ-ARRASTIA: We'd need to update 23 it, of course. 24 JUDGE BENTON: You've given me more than I 25 need --</p>	<p style="text-align: right;">522</p> <p>1 MR. DIAZ-ARRASTIA: At the same time. 2 Well, keeping in mind that he will be out of town next 3 week, I would like to accommodate that as well. 4 JUDGE BENTON: That's right. I forgot 5 about that. Through the 8th. Right? 6 MR. LEE: Well, it's out next week. I do 7 have the some depositions the first part of -- I mean, 8 ideally if that's the idea maybe on the -- would we do 9 the 15th of October? 10 JUDGE BENTON: Submit them on the 15th? 11 MR. LEE: Yes. 12 JUDGE WOOD: What day would -- what day 13 would y'all anticipate doing the closing arguments? 14 JUDGE BENTON: Well, hold on a second. 15 Let's take their papers first. This is what we're 16 addressing. 17 MR. LEE: We're both going to file. 18 MR. DIAZ-ARRASTIA: The 15th is 19 acceptable -- 20 JUDGE BENTON: Okay. 21 MR. DIAZ-ARRASTIA: -- to me. I mean, I 22 think I could do it a few days sooner, but if Steve 23 needs that long that's fine with me. 24 MR. LEE: Yeah. Unfortunately I am -- 25 JUDGE DAVIDSON: No. And I can understand</p>
<p style="text-align: right;">521</p> <p>1 MR. DIAZ-ARRASTIA: Right. 2 JUDGE BENTON: -- by my question. 3 MR. DIAZ-ARRASTIA: Okay. That's what I 4 would do by the 30th. 5 JUDGE BENTON: Okay. If it was our desire 6 to accommodate what Mr. Lee suggests, and that is get 7 some post evidentiary briefing and thereafter have oral 8 argument, would you be able to provide us with your side 9 of the closing briefing on the 30th also? If not -- 10 MR. DIAZ-ARRASTIA: Well, we were just 11 talking with the reporter and she can get us -- it will 12 take her about a week to have the record transcribed and 13 I would like -- I think ideally what you would like is 14 if you have a written closing, I'd like us to be able to 15 make record references. So we're probably not going to 16 be getting the record until just a day or two before the 17 30th. 18 JUDGE BENTON: Okay. So what date would 19 work for you? 20 MR. DIAZ-ARRASTIA: Let me look at my 21 calendar. 22 And is it -- would you contemplate that 23 both sides would file their close at the same time or 24 that I would go first and then he would go second? 25 JUDGE BENTON: At the same time.</p>	<p style="text-align: right;">523</p> <p>1 that. 2 JUDGE BENTON: Okay. Hold on a second. 3 There's no need to apologize. So I think we're firm 4 then October 15 we'll submit the paper closing briefing 5 or brief closing. 6 All right. Now, given that, what date 7 works for you to do -- 8 MR. DIAZ-ARRASTIA: Oral argument? 9 JUDGE BENTON: -- oral argument? 10 And let me just say right up front the 11 week of the 18th is probably not a good week for some of 12 us up here. 13 MR. DIAZ-ARRASTIA: Okay. I think the 14 primary consideration in that should be how long you-all 15 think you'll need to read everything? 16 JUDGE WOOD: We'll have -- we're going to 17 read. 18 JUDGE BENTON: If we're going to get it on 19 the 15th and we'll have it read the week of the 18th, 20 there's no doubt. 21 JUDGE DAVIDSON: How about the 25th, a 22 Monday? 23 JUDGE WOOD: 25th? 24 MR. DIAZ-ARRASTIA: 25th will work. 25 JUDGE BENTON: Mr. Lee?</p>

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<p>1 MR. LEE: That's fine with me. I would 2 suggest -- I will offer it. We have a conference room 3 in our office that has sort of a little round table and 4 a place to argue, but if everybody's -- George, if 5 you're comfortable doing it there -- 6 MR. DIAZ-ARRASTIA: I am perfectly 7 comfortable going to your office. 8 MR. LEE: Okay. So we'll be happy to host 9 that and give you all day in the conference room if you 10 wanted to work after we leave so... 11 JUDGE BENTON: Okay. So Monday, the 25th. 12 Let's just say 9:00 a.m. Does that work for you, Judge 13 Wood? 14 JUDGE WOOD: Yes. 15 JUDGE BENTON: Judge Davidson? 16 JUDGE DAVIDSON: Monday, the 25th. 17 JUDGE BENTON: 9:00 a.m. Okay. So -- all 18 right. With that, back to you, Mr. Diaz-Arrastia. 19 JUDGE WOOD: Two minutes. Let me whisper 20 in his ear. 21 JUDGE BENTON: Okay. Mr. Diaz-Arrastia, I 22 will give it back to you -- I'm sorry. Mr. Lee is 23 rising. 24 MR. LEE: I'm sorry. May I make one more 25 comment? I think the agreement we have on agreement</p>	<p>1 Tricon -- I mean, obviously you understand where we are 2 on the jurisdictional issue and so -- 3 JUDGE WOOD: I think under the rules if 4 one side requests it you get it so that's why we wanted 5 to know if anybody was going to request it. 6 JUDGE BENTON: Right. 7 MR. DIAZ-ARRASTIA: Well, I will request 8 it right now. 9 JUDGE WOOD: Got it. 10 JUDGE DAVIDSON: Easy. 11 JUDGE BENTON: All right. That takes care 12 of the scheduling stuff. 13 So do you have more evidence to put on? 14 MR. DIAZ-ARRASTIA: The other evidence to 15 put on, we are going to -- do we have copies? Let's go 16 get -- the agreement that we have made is that the 17 deposition of Mr. Gary Cofran, who is Vinmar's expert, 18 will be submitted in its entirety. 19 However, there are some excerpts from it. 20 And this deposition was not video'd, but there's some 21 experts -- excerpts from it that I would like to read to 22 the panel now. And if Ms. Larson would play the role of 23 Mr. Cofran, we can do that now. I think it will be 24 about ten minutes. 25 JUDGE DAVIDSON: Okay.</p>
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<p>1 fees is that Tricon would submit -- 2 JUDGE BENTON: Theirs first. 3 MR. LEE: -- theirs on the -- 4 JUDGE BENTON: 30th. 5 MR. LEE: -- 30th. And then we would file 6 response on October the 8th. 7 JUDGE BENTON: Right. 8 MR. LEE: Okay. So just on the attorneys' 9 fee issue as to what the amount is. And obviously we 10 don't agree that they're entitled to attorneys' fees, 11 but if we're going to submit counter -- 12 JUDGE BENTON: Okay. 13 JUDGE WOOD: And do we want to have a time 14 that y'all let us know what kind of ruling you want? 15 Would that be a deadline that y'all can agree on -- 16 MR. DIAZ-ARRASTIA: Well, I would -- 17 JUDGE WOOD: -- or is that just -- 18 MR. DIAZ-ARRASTIA: We've -- maybe we've 19 decided. We've decided on our side that we would like a 20 reasoned decision. 21 JUDGE WOOD: If somebody requests us do 22 it, we need to do it. 23 MR. DIAZ-ARRASTIA: And I think Mr. Lee 24 has indicated that he's okay with that. 25 MR. LEE: Right. I think that it's</p>	<p>1 MR. LEE: And if I could make just one 2 comment. I have not been provided with the designation 3 so I think rather than trying to shuffle through and 4 figure out optional completeness, I will submit whatever 5 we need to submit in a brief -- in our closing brief. 6 JUDGE DAVIDSON: I just sort of thought it 7 was going to be -- that we could consider it in its 8 entirety. 9 JUDGE BENTON: Yeah. 10 MR. DIAZ-ARRASTIA: Well, you can consider 11 it in its entirety, but there are some parts that I want 12 to emphasize. 13 JUDGE DAVIDSON: Fine. In other words, I 14 will read this entire deposition. I will give all 15 panels -- all portions of this deposition equal weight. 16 How does that sound? 17 JUDGE WOOD: That's what I show as the 18 Rule 11 agreement. 19 MR. DIAZ-ARRASTIA: Correct. That is 20 correct. 21 JUDGE DAVIDSON: I see his -- 22 JUDGE WOOD: My question is, how are we 23 going to get a copy of this to the court reporter? Now, 24 make sure that she gets a copy. 25 MR. DIAZ-ARRASTIA: We will make sure that</p>



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<p style="text-align: right;">528</p> <p>1 she -- that she gets a copy.</p> <p>2 MS. LARSON: I've got a copy right now.</p> <p>3 MR. DIAZ-ARRASTIA: Yeah. And, like I</p> <p>4 said, it was like this -- frankly, yesterday evening, I</p> <p>5 still really believed that he was going to be called,</p> <p>6 but that has changed.</p> <p>7 Why don't you get your part and we will</p> <p>8 read it.</p> <p>9 MR. LOCKWOOD: Do you want her to sit over</p> <p>10 there?</p> <p>11 MR. DIAZ-ARRASTIA: Yes. Why don't you</p> <p>12 sit on the stand to make it easier?</p> <p>13 JUDGE BENTON: All right,</p> <p>14 Mr. Diaz-Arrastia.</p> <p>15 MR. DIAZ-ARRASTIA: We are -- we are going</p> <p>16 to start on Page 5, Line 12 through Line 21.</p> <p>17 MS. LARSON: They have it.</p> <p>18 MR. DIAZ-ARRASTIA: Oh, okay. I will -- I</p> <p>19 will read it out loud so the panel can follow along. So</p> <p>20 Page 5, Lines 12 through 21.</p> <p>21 (At this time excerpts of the transcript</p> <p>22 of the deposition of Gary Cofran that was taken on</p> <p>23 September 16, 2010, were read into the record. The</p> <p>24 questions were read by Mr. Diaz-Arrastia. The answers</p> <p>25 were read by Ms. Larson.)</p>	<p style="text-align: right;">530</p> <p>1 reading. Let's --</p> <p>2 MR. DIAZ-ARRASTIA: Page 23, Line 7</p> <p>3 through 13.</p> <p>4 Are we ready?</p> <p>5 Q. (BY MR. DIAZ-ARRASTIA) Okay. When -- who --</p> <p>6 back when you were doing trades, would you have</p> <p>7 considered the -- who would you have considered the</p> <p>8 leading brokers in the U.S. dealing in aromatics?</p> <p>9 A. There was a two or three-man brokerage company</p> <p>10 out of New York. They at one time went by the name of</p> <p>11 InterCapital, if I remember correctly. There was Ed</p> <p>12 Leyman's company.</p> <p>13 MR. DIAZ-ARRASTIA: Next we are on</p> <p>14 Page 39, Line 14 through Page 40, Line 1.</p> <p>15 Now, are we ready?</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) Okay. Fair enough.</p> <p>17 If you're making a firm bid, what you put -- what you</p> <p>18 state in your firm bid are the things that you want.</p> <p>19 Would that be correct?</p> <p>20 A. Yes.</p> <p>21 Q. And, similarly, when you make a firm offer,</p> <p>22 what you include in your firm offer are the things that</p> <p>23 you're able to do, correct, or that you're committed to</p> <p>24 do let's say?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">529</p> <p>1 GARY COFRAN,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. DIAZ-ARRASTIA:</p> <p>5 Q. Good afternoon, Mr. Cofran.</p> <p>6 A. Good afternoon.</p> <p>7 Q. My name is George Diaz-Arrastia. I am one of</p> <p>8 the attorneys for Tricon in this case. I guess let's</p> <p>9 get right in. First, could you state your full name for</p> <p>10 the record?</p> <p>11 A. It's Gary Cofran.</p> <p>12 Q. Okay. And have you been hired by Vinmar in</p> <p>13 this case to be an expert witness?</p> <p>14 A. Yes.</p> <p>15 MR. DIAZ-ARRASTIA: Next is on Page 23,</p> <p>16 Lines 7 through 13.</p> <p>17 Q. (BY MR. DIAZ-ARRASTIA) Okay. When -- who --</p> <p>18 back when you were --</p> <p>19 JUDGE WOOD: Just a minute.</p> <p>20 Q. (BY MR. DIAZ-ARRASTIA) -- doing trades --</p> <p>21 JUDGE WOOD: Just a minute. Let Mr. Lee</p> <p>22 get to that spot.</p> <p>23 MR. DIAZ-ARRASTIA: Oh, I'm sorry.</p> <p>24 JUDGE WOOD: That's okay. We're just</p> <p>25 making sure everybody gets to the spot before we start</p>	<p style="text-align: right;">531</p> <p>1 Q. When a trader tells a broker that he is giving</p> <p>2 a firm bid, does that mean the broker has authority to</p> <p>3 go take that firm bid to the sellers?</p> <p>4 A. Yes.</p> <p>5 MR. DIAZ-ARRASTIA: Now, on 40 --</p> <p>6 MR. LEE: Well, I would -- I can't help</p> <p>7 myself. I would like to offer one piece as optional</p> <p>8 completeness, and that would be at Page 40, Line 7</p> <p>9 through Line 10, where the question was, "And when the</p> <p>10 terms of a firm bid meet the terms of a firm offer,</p> <p>11 that's what you have when you have a deal. Correct?"</p> <p>12 Answer: "If all the terms are the same."</p> <p>13 JUDGE BENTON: Okay.</p> <p>14 MR. DIAZ-ARRASTIA: And I pick up on</p> <p>15 Line 11 on Page 40 through Line 14.</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) Now, once a broker has</p> <p>17 a firm bid and a firm offer that match, is it customary</p> <p>18 for that broker to send some sort of written</p> <p>19 confirmation?</p> <p>20 A. Yes.</p> <p>21 MR. DIAZ-ARRASTIA: On Page 41, Line 6</p> <p>22 through Line 9.</p> <p>23 Q. (BY MR. DIAZ-ARRASTIA) Okay. Is it important</p> <p>24 for the traders to review the written confirmations when</p> <p>25 they receive them?</p>

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<p style="text-align: right;">532</p> <p>1 A. Yes.</p> <p>2 MR. DIAZ-ARRASTIA: Page 45, Line 15</p> <p>3 through 21.</p> <p>4 Q. (BY MR. DIAZ-ARRASTIA) After a deal is made</p> <p>5 and a confirm is sent, was is it customary back when you</p> <p>6 were trading for the parties to send each other their</p> <p>7 general terms and conditions of sale?</p> <p>8 A. I don't know what other companies do.</p> <p>9 Q. Did you-all do that?</p> <p>10 A. Yes, we did.</p> <p>11 MR. DIAZ-ARRASTIA: Page 55, Lines 3</p> <p>12 through 14.</p> <p>13 Q. (BY MR. DIAZ-ARRASTIA) Where Mr. Pascu is</p> <p>14 telling Mr. Rajevac, "We shall revert soon with our</p> <p>15 purchase order for your review." Do you see that, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Back when you were trading, sir, would a buyer</p> <p>18 send a purchase order if he thought there was no deal?</p> <p>19 A. Would a --</p> <p>20 Q. Would a buyer sell -- would a buyer send a</p> <p>21 seller its purchase order if the buyer thought there was</p> <p>22 no deal, if they were not going to buy?</p> <p>23 A. No.</p> <p>24 MR. DIAZ-ARRASTIA: Page 63, Lines 9</p> <p>25 through 11.</p>	<p style="text-align: right;">534</p> <p>1 wanted, yes.</p> <p>2 Q. Okay. It's not enough that he was thinking</p> <p>3 about it, he has to tell somebody, "I need U.S. origin"?</p> <p>4 A. That's right.</p> <p>5 MR. DIAZ-ARRASTIA: And Page 68, Line 11</p> <p>6 through 15.</p> <p>7 Q. (BY MR. DIAZ-ARRASTIA) And you've seen</p> <p>8 confirms that contain a term saying it has to be of a</p> <p>9 particular origin or it can't be of a particular origin,</p> <p>10 haven't you, sir?</p> <p>11 A. Yes, I have.</p> <p>12 MR. DIAZ-ARRASTIA: Page 69, Lines 16 and</p> <p>13 17.</p> <p>14 Q. (BY MR. DIAZ-ARRASTIA) Okay. And if you</p> <p>15 would look at Exhibit 43 under the quality line --</p> <p>16 MR. DIAZ-ARRASTIA: And these are Tricon</p> <p>17 Exhibit 1. Then I continue with the question on</p> <p>18 Page 69, Line 23 through 70, Line 3.</p> <p>19 Q. (BY MR. DIAZ-ARRASTIA) Do you see that, sir?</p> <p>20 And there it specifically says "Product to be of U.S.</p> <p>21 origin"?</p> <p>22 A. Yes.</p> <p>23 Q. And you've seen confirms like that before.</p> <p>24 Correct, sir?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">533</p> <p>1 Q. (BY MR. DIAZ-ARRASTIA) Origin means where</p> <p>2 it's manufactured?</p> <p>3 A. That's correct.</p> <p>4 MR. DIAZ-ARRASTIA: Page 65, Lines 15</p> <p>5 through 16.</p> <p>6 A. There's a difference between origin and</p> <p>7 loading port.</p> <p>8 MR. DIAZ-ARRASTIA: Page 66, Line 19</p> <p>9 through Page 67, Line 1.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) Okay. Well, I think</p> <p>11 when we left I had asked you the question whether any --</p> <p>12 in your mind when somebody says material is most likely</p> <p>13 U.S. origin, is that different from saying that it's</p> <p>14 guaranteed U.S. origin? Do you have an answer to that</p> <p>15 question?</p> <p>16 A. Yes.</p> <p>17 Q. And what's the answer? It's different?</p> <p>18 A. It's different, yeah.</p> <p>19 MR. DIAZ-ARRASTIA: Okay. And then on</p> <p>20 Page 67, Line 4 through 11.</p> <p>21 Q. (BY MR. DIAZ-ARRASTIA) Now, sir, will you</p> <p>22 agree with me that if Mr. Wilson wanted -- needed to buy</p> <p>23 U.S. origin material, he needed to include that in his</p> <p>24 firm bid?</p> <p>25 A. Somewhere he has to tell that that's what he</p>	<p style="text-align: right;">535</p> <p>1 MR. DIAZ-ARRASTIA: On Page 70, Line 16</p> <p>2 through 22. And now I'm referring to Tricon Exhibit 2.</p> <p>3 Q. (BY MR. DIAZ-ARRASTIA) Okay. And there under</p> <p>4 the quality line, this one states, "Product must be of</p> <p>5 non-Iranian or Chinese origin." Do you see that, sir?</p> <p>6 A. Yes.</p> <p>7 Q. You've seen that before in broker confirms,</p> <p>8 have you not, language like that?</p> <p>9 A. I've seen it before, yes.</p> <p>10 MR. DIAZ-ARRASTIA: Okay. Page 71,</p> <p>11 Lines 1 through 7.</p> <p>12 Q. (BY MR. DIAZ-ARRASTIA) And if you will look</p> <p>13 at Exhibit 45 now --</p> <p>14 MR. DIAZ-ARRASTIA: That would be Tricon</p> <p>15 Exhibit 3.</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) Now, sir, this is</p> <p>17 again similar to 43 and 44. Correct, sir?</p> <p>18 A. Yes.</p> <p>19 Q. And you also haven't seen Exhibit 45 before</p> <p>20 today?</p> <p>21 A. No.</p> <p>22 Q. Correct?</p> <p>23 MR. DIAZ-ARRASTIA: Okay. Moving down to</p> <p>24 Page 71, Line 11.</p> <p>25 Q. (BY MR. DIAZ-ARRASTIA) Okay. And under the</p>

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<p style="text-align: right;">536</p> <p>1 quality line, it also states "this time" in parentheses</p> <p>2 "No Iranian or Chinese origin." Do you see that, sir?</p> <p>3 <b>A. I see it.</b></p> <p>4 Q. And you've seen confirms similar -- that</p> <p>5 contain similar language back when you were trading.</p> <p>6 Correct, sir?</p> <p>7 <b>A. Yes.</b></p> <p>8 <b>MR. DIAZ-ARRASTIA: Page 75, Line 18</b></p> <p>9 <b>through 25.</b></p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) Back when you were a</p> <p>11 trader, sir, was it common for traders to sell material</p> <p>12 that they did not yet own?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Do traders sell material when they are short</p> <p>15 on that material back when you were a trader?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Was that common?</p> <p>18 <b>A. Some people did it. It was a developing art</b></p> <p>19 <b>at that time.</b></p> <p>20 <b>MR. DIAZ-ARRASTIA: Okay. Page 76,</b></p> <p>21 <b>Line 15 through Page 77, Line 10.</b></p> <p>22 Q. (BY MR. DIAZ-ARRASTIA) Now, hypothetically if</p> <p>23 a trader sells a load of MX that he does not yet own --</p> <p>24 <b>MR. DIAZ-ARRASTIA: And Mr. Cofran nodded</b></p> <p>25 <b>his head.</b></p>	<p style="text-align: right;">538</p> <p>1 Q. And when there's no activity, it's very hard</p> <p>2 to find a buyer. Correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 <b>MR. DIAZ-ARRASTIA: And those are the</b></p> <p>5 <b>selections that we wanted to read.</b></p> <p>6 JUDGE BENTON: All right.</p> <p>7 MR. DIAZ-ARRASTIA: And at this moment --</p> <p>8 JUDGE BENTON: You're going to read some</p> <p>9 after all?</p> <p>10 MR. LEE: No, I'm not. I think that -- I</p> <p>11 had the one optional completeness. And I'm sure that</p> <p>12 y'all will read it if you want to and --</p> <p>13 JUDGE DAVIDSON: I will read it, I</p> <p>14 promise, all of it.</p> <p>15 MR. DIAZ-ARRASTIA: Well, the only thing</p> <p>16 that I want to do before I rest is that yesterday</p> <p>17 Mr. Lockwood wrote -- made some calculations on this</p> <p>18 board and we would like to mark them as an exhibit for</p> <p>19 the arbitration. It will be Tricon Exhibit 41.</p> <p>20 JUDGE BENTON: All right. Very good.</p> <p>21 MR. DIAZ-ARRASTIA: Let me just find a</p> <p>22 pen.</p> <p>23 (Tricon Exhibit 41 marked.)</p> <p>24 MR. DIAZ-ARRASTIA: And at this moment the</p> <p>25 claimant rests.</p>
<p style="text-align: right;">537</p> <p>1 Q. (BY MR. DIAZ-ARRASTIA) -- then after the sale</p> <p>2 is made the price of MX begins to fall, that trader has</p> <p>3 just made a good deal. Right?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And that is because he has just sold high and</p> <p>6 he is going to be able to buy low?</p> <p>7 <b>A. Right.</b></p> <p>8 Q. And things like that happen all the time in</p> <p>9 petrochemicals trading, don't they?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And it could also happen that you sell today</p> <p>12 and then the price begins to go up and then you're going</p> <p>13 to lose money?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Similarly, if you're a buyer of MX and you buy</p> <p>16 today and the price begins to go down, you've just made</p> <p>17 a bad deal?</p> <p>18 <b>A. Hypothetically, yes.</b></p> <p>19 <b>MR. DIAZ-ARRASTIA: Page 80, Line 3</b></p> <p>20 <b>through 10.</b></p> <p>21 Q. (BY MR. DIAZ-ARRASTIA) Have you ever heard</p> <p>22 the term "the market freezes"?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And what does that mean?</p> <p>25 <b>A. That there's no activity.</b></p>	<p style="text-align: right;">539</p> <p>1 JUDGE BENTON: All right. Just to</p> <p>2 address -- Mr. Lee, again, it's my understanding that</p> <p>3 the parties have submitted the entirety of Mr. Cofran's</p> <p>4 deposition so it is our intent to read it unless you</p> <p>5 don't want us to read it.</p> <p>6 MR. LEE: Well --</p> <p>7 JUDGE WOOD: No, but the Rule 11 was that</p> <p>8 we would read it.</p> <p>9 MR. LEE: I guess what I would say is</p> <p>10 you're certainly -- it's in the evidence if you want to</p> <p>11 read it. I intend to pull out any testimony that I</p> <p>12 would rely upon in our briefing. So if it's something</p> <p>13 that's important that I think you need to know, I'll</p> <p>14 certainly put it in my briefing, but it's there for you</p> <p>15 to read if you want to. I guess that's the way I</p> <p>16 would --</p> <p>17 JUDGE WOOD: And I noticed -- if you have</p> <p>18 seen what's been given to us -- there are exhibits</p> <p>19 attached and I think they're the exhibits that are</p> <p>20 referenced in the deposition.</p> <p>21 MR. LEE: Okay.</p> <p>22 JUDGE WOOD: So I just wanted that clear</p> <p>23 on the record --</p> <p>24 MR. DIAZ-ARRASTIA: That is correct.</p> <p>25 JUDGE WOOD: -- that we have these</p>

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<p style="text-align: right;">540</p> <p>1 exhibits.</p> <p>2 MR. DIAZ-ARRASTIA: That is correct.</p> <p>3 JUDGE DAVIDSON: But I'd like to make it</p> <p>4 clear that at least for the copy of the deposition I</p> <p>5 got, the copies of the handwritten exhibits are not of</p> <p>6 the highest quality. If those same exhibits are already</p> <p>7 in evidence in either the Vinmar, the Tricon or the</p> <p>8 Joint, then it doesn't matter.</p> <p>9 MR. DIAZ-ARRASTIA: Not all the exhibits</p> <p>10 are the same. There are some exhibits to the deposition</p> <p>11 that --</p> <p>12 JUDGE DAVIDSON: This one --</p> <p>13 MS. LARSON: Some of the ones that we got</p> <p>14 were very difficult to read as well.</p> <p>15 MR. DIAZ-ARRASTIA: They're -- the ones I</p> <p>16 have are not a lot better.</p> <p>17 JUDGE DAVIDSON: Okay. In that case, it</p> <p>18 is what it is.</p> <p>19 MR. LEE: Those are Gary's --</p> <p>20 JUDGE DAVIDSON: Well, it is -- the stuff</p> <p>21 is tight.</p> <p>22 MS. LARSON: This has the same pages in</p> <p>23 there.</p> <p>24 JUDGE DAVIDSON: Yeah. It is actually a</p> <p>25 little better.</p>	<p style="text-align: right;">542</p> <p>1 (At this time the witness was duly sworn</p> <p>2 by Judge Benton.)</p> <p>3 JUDGE BENTON: Mr. Lee, you may proceed.</p> <p>4 LAURENTIU PAUL PASCU,</p> <p>5 having been first duly sworn, testified as follows:</p> <p>6 DIRECT EXAMINATION (3:57 p.m.)</p> <p>7 BY MR. LEE:</p> <p>8 Q. Okay. Mr. Pascu, you don't know this, but</p> <p>9 earlier today we heard from you in your deposition and</p> <p>10 so I'm not going to spend a whole lot of time running</p> <p>11 back through things that were covered, but -- so we</p> <p>12 might just cut through it, but I would like for you to</p> <p>13 introduce yourself to the panel, please.</p> <p>14 A. <b>My name is Laurentiu Pascu. I am working</b></p> <p>15 <b>currently for Vinmar International in Houston and --</b></p> <p>16 Q. Okay. And, Mr. Pascu, what is it that you do</p> <p>17 for Vinmar?</p> <p>18 A. <b>I'm a supply chain specialist.</b></p> <p>19 Q. And could you describe what that means at</p> <p>20 Vinmar?</p> <p>21 A. <b>I am handling the logistics and the operations</b></p> <p>22 <b>portion of the business.</b></p> <p>23 Q. Are you -- are you a trader?</p> <p>24 A. <b>No.</b></p> <p>25 Q. Do you get involved in negotiating the</p>
<p style="text-align: right;">541</p> <p>1 MS. LARSON: Here, I'll give you these.</p> <p>2 JUDGE WOOD: Well, it's those notes that</p> <p>3 are Vinmar notes.</p> <p>4 MS. LARSON: These are slightly better.</p> <p>5 I'll pass them out.</p> <p>6 JUDGE DAVIDSON: I need one.</p> <p>7 MR. LEE: And if -- I can go check to see</p> <p>8 if we've got a better copy.</p> <p>9 JUDGE WOOD: Some of them are darker than</p> <p>10 others.</p> <p>11 JUDGE BENTON: Okay. With that --</p> <p>12 MS. LARSON: It's not terribly better.</p> <p>13 It's marginally better.</p> <p>14 JUDGE BENTON: And with that, Tricon</p> <p>15 rests?</p> <p>16 MR. DIAZ-ARRASTIA: Tricon rests.</p> <p>17 JUDGE BENTON: All right. Very good.</p> <p>18 Mr. Lee, you ready to proceed?</p> <p>19 MR. LEE: Yes, Your Honor. We will call</p> <p>20 Laurentiu Pascu, who I hope is out in the hallway.</p> <p>21 JUDGE BENTON: Laurentiu Pascu. And is</p> <p>22 the traditional oath appropriate?</p> <p>23 MR. LEE: Yes.</p> <p>24 JUDGE BENTON: Mr. Pascu, if you'll raise</p> <p>25 your right hand, please.</p>	<p style="text-align: right;">543</p> <p>1 commercial terms of an agreement?</p> <p>2 A. <b>No.</b></p> <p>3 Q. How long have you been with Vinmar?</p> <p>4 A. <b>I started January 2006.</b></p> <p>5 Q. And, again, I think we saw some of this, but</p> <p>6 do you mind just telling the panel a little bit about</p> <p>7 your background, where you grew up?</p> <p>8 A. <b>I'm originally from Romania. I moved to</b></p> <p>9 <b>Houston in January 2006 since I've been with Vinmar</b></p> <p>10 <b>and --</b></p> <p>11 Q. And how long have you been with Vinmar?</p> <p>12 A. <b>Five years. Ever since I've been in Houston,</b></p> <p>13 <b>I've been with Vinmar.</b></p> <p>14 Q. You have had some schooling in the United</p> <p>15 States?</p> <p>16 A. <b>Yes. I have done my master in business</b></p> <p>17 <b>administration at the University of Houston.</b></p> <p>18 Q. As you understand it, Mr. Pascu, what</p> <p>19 authority do you have to negotiate commercial terms of a</p> <p>20 deal with Vinmar?</p> <p>21 A. <b>No authority.</b></p> <p>22 Q. What authority do you have to change</p> <p>23 commercial terms?</p> <p>24 A. <b>No authority.</b></p> <p>25 Q. You do know that at some point in time in the</p>



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<p style="text-align: right;">544</p> <p>1 summer of 2008 that Rick Wilson informed you of what he</p> <p>2 thought was a deal with Tricon. Correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. And what did you understand about the terms of</p> <p>5 this deal?</p> <p>6 <b>A. I understood that there could be a shipment</b></p> <p>7 <b>of -- a potential shipment of mixed xylene.</b></p> <p>8 Q. What understanding did you have of the origin</p> <p>9 of the mixed xylenes?</p> <p>10 <b>A. That it's going to come from USA.</b></p> <p>11 Q. Where did you obtain that understanding?</p> <p>12 <b>A. From -- from discussion that I have had with</b></p> <p>13 <b>Rick.</b></p> <p>14 JUDGE BENTON: From discussions you had</p> <p>15 with?</p> <p>16 THE WITNESS: Rick Wilson.</p> <p>17 JUDGE BENTON: Okay.</p> <p>18 Q. (BY MR. LEE) Now, as the logistics specialist</p> <p>19 at Vinmar, you supervised the entry of the terms or</p> <p>20 information into Vinmar's SAP system?</p> <p>21 <b>A. Yes. I do supervise the entry of the data</b></p> <p>22 <b>into SAP system in Vinmar for chemicals.</b></p> <p>23 Q. And what is -- what is the SAP system?</p> <p>24 <b>A. It's the system that serves for entering all</b></p> <p>25 <b>the data, I suppose for all management. I'm not really</b></p>	<p style="text-align: right;">546</p> <p>1 Q. To the extent that Mr. Anaya entered any</p> <p>2 information into the SAP system at Vinmar that had</p> <p>3 anything to do with this transaction, was he doing that</p> <p>4 under your supervision?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Now, Joint Exhibit 7, that doesn't contain all</p> <p>7 of the information that was in Vinmar's SAP system, does</p> <p>8 it?</p> <p>9 <b>A. No. Each of the tabs have -- contains a</b></p> <p>10 <b>certain portion of the information.</b></p> <p>11 Q. Okay. Now, I'd ask you to take a look at the</p> <p>12 notebook, Vinmar Exhibits. Okay? And if you'll turn to</p> <p>13 Vinmar Exhibit No. 4, so it's going to be Tab 4 there,</p> <p>14 sir.</p> <p>15 <b>A. Okay.</b></p> <p>16 Q. Okay. Now, do you recognize the pages</p> <p>17 contained within Vinmar Exhibit No. 4?</p> <p>18 JUDGE BENTON: Just a second.</p> <p>19 MR. DIAZ-ARRASTIA: I have an objection to</p> <p>20 two of the pages on this exhibit.</p> <p>21 And I understand the panel will consider</p> <p>22 everything, but I just wanted to explain why I do not</p> <p>23 believe this is reliable. In particular, I have an</p> <p>24 objection to the last two pages of your exhibit, VIN 93</p> <p>25 and 94.</p>
<p style="text-align: right;">545</p> <p>1 sure exactly what means SAP so...</p> <p>2 Q. You know it requires you to enter some data?</p> <p>3 <b>A. Right. It requires me to enter -- actually it</b></p> <p>4 <b>requires to enter all the data referring to that</b></p> <p>5 <b>business or that shipment.</b></p> <p>6 Q. All right. Let me ask you to take a look at</p> <p>7 Joint Exhibit No. 7. Mr. Pascu, there's three notebooks</p> <p>8 in front of you. It's going to be the one on the top on</p> <p>9 your left right there.</p> <p>10 <b>A. Okay.</b></p> <p>11 Q. And if you'll turn to Tab 7.</p> <p>12 <b>A. Okay.</b></p> <p>13 Q. And what are the documents contained within</p> <p>14 Joint Exhibit 7?</p> <p>15 <b>A. It is the print screen of the tabs in SAP.</b></p> <p>16 Q. And this refers to -- there's a name at the</p> <p>17 top -- E. Anaya. Do you see that?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And was that -- or who was that?</p> <p>20 <b>A. Mr. Eduardo Anaya was at the time a commercial</b></p> <p>21 <b>trainee and he was helping -- actually under the</b></p> <p>22 <b>training of logistic under my supervision at that time.</b></p> <p>23 Q. All right. And is Mr. Anaya still employed at</p> <p>24 Vinmar?</p> <p>25 <b>A. No.</b></p>	<p style="text-align: right;">547</p> <p>1 These are screens that as you see were</p> <p>2 entered by Mr. Eduardo Anaya. We requested Mr. Anaya's</p> <p>3 deposition but were told we could not have it because he</p> <p>4 no longer works for the company, he now lives in Mexico</p> <p>5 and they didn't know where he lived anymore, so he was</p> <p>6 not available.</p> <p>7 We do not know when the information in</p> <p>8 these screens was entered, but we have reason to think</p> <p>9 that it was after this dispute. And I can get into that</p> <p>10 with Mr. Pascu when I take him on cross-examination.</p> <p>11 JUDGE BENTON: We understand your concerns</p> <p>12 and we'll let you take it up on cross. All right.</p> <p>13 Q. (BY MR. LEE) Okay. Mr. Pascu, do you</p> <p>14 recognize the documents contained in Vinmar Exhibit</p> <p>15 No. 4?</p> <p>16 <b>A. Yes. It is a print screen of the SAP tab.</b></p> <p>17 <b>(Brief interruption.)</b></p> <p>18 JUDGE BENTON: Hold on one second.</p> <p>19 Q. (BY MR. LEE) And as I understand it, the SAP</p> <p>20 system contains a number of different tabs and entries</p> <p>21 that you would drill down into. Correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Okay. Pages 2 and 3 of Vinmar Exhibit No. 4,</p> <p>24 is it your understanding that those two pages, in fact,</p> <p>25 are contained within Vinmar's SAP system?</p>

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<p style="text-align: right;">548</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And can you tell us what -- so this</p> <p>3 would be -- how would this reside in the system? Where</p> <p>4 would we find this documentation?</p> <p>5 A. Let -- on the screen, there are three tabs.</p> <p>6 The first tab is describing delivery and all the</p> <p>7 other -- all the terms like payment terms, Incoterms,</p> <p>8 currency. There is a second tab that, going back to</p> <p>9 Page No. 1, is describing the product, the quantity, the</p> <p>10 date of delivery. And there is a third tab in the</p> <p>11 additional tabs that have the delivery details, again</p> <p>12 repeating the Incoterms, the country of origin and --</p> <p>13 Q. Okay. And what does the -- there's a</p> <p>14 statement on here about midway down on the SAP data that</p> <p>15 says, "C-T-R-Y dash Origin." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. What does that stand for?</p> <p>18 A. Country of origin.</p> <p>19 Q. And what was put in the blank?</p> <p>20 A. USA.</p> <p>21 Q. What does that signify?</p> <p>22 A. That the origin is USA.</p> <p>23 Q. Okay. And where did you obtain that</p> <p>24 understanding?</p> <p>25 A. From my discussion with Rick Wilson.</p>	<p style="text-align: right;">550</p> <p>1 Q. Now, if we -- if we look at -- I'll have to</p> <p>2 make you change notebooks for a second to the Tricon</p> <p>3 exhibit notebook. And if you'll turn to Tab No. 10.</p> <p>4 So that's going to be the bottom notebook.</p> <p>5 Now, Mr. Pascu, what is the document contained in Tab</p> <p>6 No. 10?</p> <p>7 A. Printout of the SAP entry.</p> <p>8 Q. I'm sorry?</p> <p>9 A. Printout of the SAP entry.</p> <p>10 Q. Okay.</p> <p>11 A. Printout of the SAP.</p> <p>12 Q. Okay. Now -- well, if we go to Page 2,</p> <p>13 there's a blank for origin. You see that?</p> <p>14 A. Yes.</p> <p>15 JUDGE DAVIDSON: What is --</p> <p>16 THE WITNESS: Sorry?</p> <p>17 JUDGE BENTON: This is Tricon.</p> <p>18 MR. LEE: Oh, I'm sorry. Tricon</p> <p>19 Exhibit 10. My apologies.</p> <p>20 JUDGE DAVIDSON: Tricon, the purchase</p> <p>21 order.</p> <p>22 Q. (BY MR. LEE) Now, at Page 2 of Tricon -- now,</p> <p>23 let me ask you, the entry of data into the SAP system,</p> <p>24 that is something that you do as a logistics specialist?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">549</p> <p>1 JUDGE DAVIDSON: I'm sorry. From your</p> <p>2 discussion with?</p> <p>3 THE WITNESS: With Rick Wilson. Sir, you</p> <p>4 want me to speak louder?</p> <p>5 JUDGE DAVIDSON: No, no, no, no. I just</p> <p>6 missed that one --</p> <p>7 THE WITNESS: Okay.</p> <p>8 JUDGE DAVIDSON: -- that word.</p> <p>9 THE WITNESS: Sorry.</p> <p>10 Q. (BY MR. LEE) And what is the date of this</p> <p>11 document according to the print screen?</p> <p>12 A. 24th of July.</p> <p>13 JUDGE BENTON: Where is that located?</p> <p>14 THE WITNESS: If you look on any tab, it's</p> <p>15 going to be on the right-hand side upper -- upper side,</p> <p>16 dock date. Next besides Tricon Energy, LLC.</p> <p>17 JUDGE BENTON: Okay. Let's proceed.</p> <p>18 Q. (BY MR. LEE) And the last page of Vinmar</p> <p>19 Exhibit No. 4, what does that reflect about the country</p> <p>20 of origin?</p> <p>21 A. That the origin is USA.</p> <p>22 Q. Okay. And, again, where was that</p> <p>23 understanding obtained?</p> <p>24 A. From my discussion with the trader, Rick</p> <p>25 Wilson.</p>	<p style="text-align: right;">551</p> <p>1 Q. And the initial preparation of a purchase</p> <p>2 order, is that something that you do?</p> <p>3 A. Correct.</p> <p>4 Q. Who reviews the purchase order or is the</p> <p>5 purchase order reviewed before it would be sent to the</p> <p>6 counterparty?</p> <p>7 A. The purchase order is required to be reviewed</p> <p>8 by the trader. Actually there is a requirement even if</p> <p>9 in the system for having it to be released by the</p> <p>10 trader.</p> <p>11 Q. All right. So while you or somebody within</p> <p>12 your group may prepare the data into SAP and the</p> <p>13 purchase order before it is sent, the trader will review</p> <p>14 it?</p> <p>15 A. Correct.</p> <p>16 Q. Now, at Page 2 of this purchase order, do you</p> <p>17 see the -- a line for origin?</p> <p>18 A. Yes.</p> <p>19 Q. And it's blank, is it not?</p> <p>20 A. Yes, it is blank.</p> <p>21 Q. Can you explain why it is blank?</p> <p>22 A. At the time that purchase order was still</p> <p>23 under preparation. We were waiting clarification from</p> <p>24 the trader and we were waiting for clarification</p> <p>25 actually on what is going to be the loading port.</p>

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<p style="text-align: right;">552</p> <p>1           <b>As that information never came, we never</b>  2 <b>got to a stage where we had finalized the data into the</b>  3 <b>system.</b>  4       Q. Why is the loading port important?  5       <b>A. Loading ports -- loading port is very</b>  6 <b>important for two reasons. One, that it's helping us</b>  7 <b>understanding where should we set up the inspection</b>  8 <b>instructions, the surveyor, where we should send the</b>  9 <b>surveyor to inspect the cargo before it gets into the</b>  10 <b>vessel.</b>  11       <b>And, secondly, that it is a requirement</b>  12 <b>under -- on the letter of credit to stipulate the port</b>  13 <b>of loading.</b>  14       Q. Now, but we just saw a couple of pages from  15 Vinmar's SAP records that reflect the country of origin  16 as USA. Why wasn't that entered into this purchase  17 order at this time; do you know?  18       <b>A. We were still waiting on the port of loading</b>  19 <b>information so that we can put all these details</b>  20 <b>together.</b>  21       Q. Is the -- is the data that is entered into the  22 purchase order, is it manually entered or is it simply  23 the computer takes it from SAP and puts it into the  24 form?  25       <b>A. These specific places are manually entered.</b></p>	<p style="text-align: right;">554</p> <p>1 <b>we would be acting on the trader's requirements.</b>  2       MR. LEE: I'll pass the witness.  3       JUDGE BENTON: Mr. Diaz-Arrastia?  4       MR. DIAZ-ARRASTIA: Okay.  5       CROSS-EXAMINATION (4:14 p.m.)  6 BY MR. DIAZ-ARRASTIA:  7       Q. Mr. Pascu, do you remember when we took your  8 deposition a couple of months ago?  9       <b>A. Yes, sir, I do.</b>  10       Q. And you did your best to answer my questions  11 truthfully then, didn't you?  12       <b>A. Yes, sir, I did.</b>  13       Q. Now, we have looked at Joint Exhibit 10, which  14 is the purchase order, and we have noted, as we did  15 during the deposition that I had taken, the line for  16 origin --  17       <b>A. Which one?</b>  18       Q. Tricon Exhibit No. 10, the purchase order.  19       <b>A. Okay. The one that we are looking at.</b>  20       Q. Right. We just talked about it. But Mr. Lee  21 has noted, just as I noted during my deposition, that  22 the lines for origin is blank.  23       <b>A. Correct.</b>  24       Q. And the line for origin is blank even though  25 we saw in Vinmar Exhibit No. 4 in the second two pages</p>
<p style="text-align: right;">553</p> <p>1       Q. And just to be clear, this purchase order was  2 never sent to Tricon. Correct?  3       <b>A. No.</b>  4       Q. No, it was not sent?  5       <b>A. No, it was not sent. Sorry.</b>  6       Q. When you -- you sent an e-mail to Vuk Rajevac  7 at Tricon and you mentioned to Mr. Rajevac that you  8 would be sending at some point in time a purchase order.  9 Do you recall that?  10       <b>A. Yes, I do.</b>  11       Q. Was the purchase order that you were referring  12 to, was it -- would it be something ultimately like what  13 we see in Vinmar Exhibit No. 10?  14       <b>A. Yes.</b>  15       Q. Now, as to what terms were included in that  16 purchase order, who would make the decision about that?  17       <b>A. As mentioned, the trader has the final review</b>  18 <b>of the -- of the purchase order and he's going to be</b>  19 <b>reviewing the terms and he's going to be agreeing on</b>  20 <b>each of these terms before it's sent -- it gets sent to</b>  21 <b>the other counterparty.</b>  22       Q. And if so terms are removed from the purchase  23 order or added to the purchase order, that would be  24 something that the trader would make the decision on?  25       <b>A. We would be acting -- on the operation level,</b></p>	<p style="text-align: right;">555</p> <p>1 that the SAP system in those documents had an entry for  2 origin.  3       <b>A. Correct.</b>  4       Q. And it is your testimony that the purchase  5 order is generated automatically by the SAP system?  6       <b>A. There are two portions on this. One, if you</b>  7 <b>look on the front page, you'll find seller, buyer and</b>  8 <b>many other data before the text. So before total terms</b>  9 <b>and total value, subject to tolerance, USD. That is</b>  10 <b>coming automatic from the system.</b>  11       <b>Then the text from down -- from down to</b>  12 <b>bottom from terms, he used -- until the signature</b>  13 <b>portion, Best Regards, Rick Wilson, that is manual</b>  14 <b>entries that is coming from the system.</b>  15       Q. But you remember telling me during your  16 deposition that the purchase order was automatically  17 generated when you hit the print button on the SAP  18 system?  19       <b>A. Right. I'm describing to you the process what</b>  20 <b>it takes, the data, how it takes when it gets generated</b>  21 <b>from the SAP.</b>  22       JUDGE DAVIDSON: Wait a minute. I want to  23 make sure I understand that.  24       Are you saying that when a bid comes in  25 the contents of that bid somehow get projected on to the</p>

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<p style="text-align: right;">556</p> <p>1 spreadsheet that is -- that are on those computer 2 screens without any manual input? 3 THE WITNESS: Let me clarify. Everything 4 is manual. Now, we are -- we are entering manual in 5 each tab. What I'm suggesting is that -- what I'm 6 saying is that this text from the Terms For the Above PO 7 are as follows till the end where the signature portion 8 is. 9 These as well are entered manual but -- 10 JUDGE DAVIDSON: Okay. 11 THE WITNESS: -- they are not like -- they 12 are not coming directly from the -- you know, like the 13 price, I'm not doing anything manual after the tab is 14 entered, but from the text you still can modify it. 15 JUDGE DAVIDSON: Okay. I just misund -- I 16 think I misunderstood what you said when you said it was 17 automatically input off of a fax. I was going to 18 wonder -- 19 THE WITNESS: No, no. 20 JUDGE DAVIDSON: -- how did you manage to 21 do that. Okay. 22 THE WITNESS: Sorry. 23 JUDGE DAVIDSON: Okay. Sorry to 24 interrupt. It just occurred -- 25 Q. (BY MR. DIAZ-ARRASTIA) Mr. Pascu, let me hand</p>	<p style="text-align: right;">558</p> <p>1 And then I said, "And that automatically 2 generates a purchase order confirmation?" 3 And you said, "Upon printing of this 4 document." 5 A. Okay. 6 Q. Do you remember giving me that testimony? 7 A. Okay. 8 Q. And what you're saying is that you didn't give 9 me a full answer because the origin part of the purchase 10 order is actually not generated automatically? That's 11 your story today? 12 A. No. 13 MR. LEE: I object to the question. That 14 is not -- his testimony is entirely consistent today -- 15 MR. DIAZ-ARRASTIA: Well -- 16 MR. LEE: -- with what he said in his -- 17 JUDGE BENTON: Just a second. Are you 18 finished? 19 MR. LEE: Yes, Your Honor. 20 JUDGE BENTON: You can take it up in 21 redirect. Let's proceed. 22 A. Okay. What I'm saying -- what I'm saying is 23 the following. There are three -- if we can go back to 24 the -- to the print screens of the -- of the SAP. Okay. 25 I don't know where --</p>
<p style="text-align: right;">557</p> <p>1 you a transcript of the deposition that you gave me. 2 A. Okay. 3 Q. And we're going to talk a little bit about 4 that. 5 A. Okay. 6 Q. If you will turn to Page 48. 7 A. 48 did you say? 8 Q. Page 48. There are for pages to a side on 9 that document. 10 A. Okay. 11 Q. Okay. Do you remember when I asked you -- and 12 I think in your deposition, Exhibit 34 to your 13 deposition was Tricon Exhibit 10 in this hearing. It's 14 the same document, the purchase order. 15 So do you remember when I asked you, "How 16 was Exhibit No. 34," which is the purchase order, now 17 Exhibit 10, "or documents like that -- how are Vinmar's 18 purchase order confirmation prepared?" 19 A. Okay. 20 Q. Do you remember when I asked you that? And 21 you said, "What do you mean?" 22 I went back. "Well, generally how are 23 they prepared?" 24 And you say, "Data is entered in this 25 case."</p>	<p style="text-align: right;">559</p> <p>1 JUDGE WOOD: Is that these blue things? 2 THE WITNESS: Yeah. We -- 3 MR. LEE: Tab 7. 4 JUDGE WOOD: Tab 7, Joint. 5 MR. LEE: It's in the top notebook? 6 THE WITNESS: This one. 7 MR. LEE: No. I'm sorry. That one. Yes. 8 A. Okay. Whenever we are getting the data, 9 whether it's coming through e-mail or broker, we are -- 10 we are entering the data into SAP. And you see there is 11 a top tab called text, third -- third one from the 12 left-hand side on top. It's called -- it's called the 13 tab Text. 14 There is where the text gets written into 15 it. And it's showing up after printing on this -- on 16 this paperwork, Exhibit No. 10. So -- okay. So what 17 I'm -- what I'm referring, that all -- this tab, Text, 18 contains all the data from the terms of the above field 19 are as follows till the signature portion. 20 Okay. And those terms are for something 21 that can be modified, whether the trader requires or 22 not. And once you get printed, that automatically -- 23 that text is coming on the -- on the paper. 24 Q. (BY MR. DIAZ-ARRASTIA) Okay. 25 A. It's placed on the paper.</p>



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<p style="text-align: right;">560</p> <p>1 Q. Okay. Mr. Pascu, now take a look at Page 54.  2 Okay. Look at Line 5 of Page 54. And I  3 asked you again -- do you remember this question?  4 "Okay. I understand that no one actually  5 gets down and writes or types in all of this  6 information, it's automatically created by the system."  7 <b>A. Okay.</b>  8 Q. And you understand that we're referring to the  9 purchase order. And you say, "Okay"?  10 And then I asked you, "And when you hit  11 the print PO button it just generates this depending on  12 what information was entered?"  13 And you say, "Okay."  14 Now, I say, "Is that all true?"  15 And you say, "Yes."  16 Do you remember that?  17 <b>A. Okay.</b>  18 Q. So I asked you a second time whether the  19 purchase order was generated automatically and you said  20 "Yes" without any qualifications.  21 <b>A. I'm saying yes as well today. I'm not -- I'm</b>  22 <b>not -- I'm not disputing what I'm saying. What I'm</b>  23 <b>trying to say to you -- you are trying to say something</b>  24 <b>and I'm saying the same thing, said with different</b>  25 <b>words.</b></p>	<p style="text-align: right;">562</p> <p>1 the question, "All right. That's fine. Look at the  2 second Page of Exhibit 34."  3 <b>A. Okay.</b>  4 Q. And that is the second page of the purchase  5 order. Correct?  6 <b>A. Okay. Correct.</b>  7 Q. Now, this is where you're now saying this is  8 entered manually. Right?  9 <b>A. Now --</b>  10 MR. LEE: I don't believe that's what he  11 said.  12 JUDGE DAVIDSON: Let --  13 MR. LEE: Okay. I'm --  14 JUDGE DAVIDSON: Please let him answer.  15 I'm sorry.  16 <b>A. Here was --</b>  17 Q. (BY MR. DIAZ-ARRASTIA) I'm asking, is the  18 information beginning on the --  19 <b>A. No.</b>  20 Q. -- second page, is that now entered manually?  21 <b>A. No. All the data initially is entered</b>  22 <b>manually. There is no such a system that is picking up</b>  23 <b>the data from somewhere. All the data is entered</b>  24 <b>manually.</b>  25 <b>What I'm trying to say is that you have on</b></p>
<p style="text-align: right;">561</p> <p>1 <b>What I'm trying to say is the following.</b>  2 <b>I'm trying to say that this text as it is here, okay, is</b>  3 <b>something that the system allows you to change at any</b>  4 <b>point in time, depending on what -- the way that -- the</b>  5 <b>way that the process is, we are working on this text as</b>  6 <b>we are -- as we are going to the trader.</b>  7 <b>We are -- the trader is reviewing the</b>  8 <b>paperwork and he's going to come back to us with any</b>  9 <b>modifications that he's going to require. Then we go</b>  10 <b>back into a system, apply the modification and issue the</b>  11 <b>purchase order. This is the process. So I'm not saying</b>  12 <b>that is --</b>  13 Q. Okay. Now, Mr. Pascu, remember that so far I  14 had asked you questions in general about how the  15 purchase order was generated. Do you remember that I  16 also asked you some specific questions about it? Do you  17 recall --  18 <b>A. About what?</b>  19 Q. -- that?  20 It was some time ago. You may not  21 remember.  22 <b>A. Okay.</b>  23 Q. I want you to take a look at Page 55.  24 <b>A. Okay.</b>  25 Q. In Page 55, I asked you -- Line 1, I asked you</p>	<p style="text-align: right;">563</p> <p>1 the Tab No. 3, which is -- which is showing on the --  2 right now I'm looking to this screen. Okay. This I'm  3 not entering any text manually. I'm just having a  4 dropdown list and I'm taking that dropdown list and I'm  5 putting, okay, it is your USA origin. I'm USA origin.  6 So that -- this is how manually it's entered.  7 Then on the text it's something that I can  8 type in and therefore I am saying it's manual typing.  9 Let's put it manual typing if that is going to avoid the  10 confusions that we are seeing.  11 JUDGE WOOD: Could we get for the record  12 what exhibit number the witness is holding up so we can  13 look at the same one?  14 JUDGE BENTON: The witness is holding  15 up --  16 MR. LEE: Joint Exhibit 7.  17 MR. DIAZ-ARRASTIA: Joint Exhibit 7.  18 JUDGE WOOD: Okay. And exactly which  19 page? You know, don't say "that VIN thing down at the  20 bottom." Is this 91-B?  21 THE WITNESS: 91-A.  22 JUDGE WOOD: A.  23 MR. LEE: A.  24 JUDGE WOOD: A. Thank you.  25 Q. (BY MR. DIAZ-ARRASTIA) Okay. Mr. Pascu --</p>

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<p>1 A. I will -- one second. I will go back also to</p> <p>2 the screens that we were showing. Okay. The initial</p> <p>3 Vinmar --</p> <p>4 Q. Vinmar 4?</p> <p>5 A. Yeah, Vinmar 4. Same thing here. Okay? So,</p> <p>6 again, this -- if you look here on VIN 93, okay, this</p> <p>7 is -- again is a dropdown list that we have to pick on.</p> <p>8 Okay. And we are just scrolling down, pick the right</p> <p>9 information and this is how it gets inserted into the --</p> <p>10 into the system.</p> <p>11 Q. Okay. Now, let's continue on Page 55.</p> <p>12 A. On the tab Text, however, this starts as blank</p> <p>13 and this is where we are entering this text.</p> <p>14 Q. Let's continue on Page 55. My next question</p> <p>15 to you was, "Do you see where there is a line that says</p> <p>16 origin on the purchase order?"</p> <p>17 And your answer is, "Yes."</p> <p>18 "And it is blank. Correct?"</p> <p>19 Your answer is, "Yes."</p> <p>20 And then my question was, "And would that</p> <p>21 be because no origin was entered into the system prior</p> <p>22 to this being printed?"</p> <p>23 And your answer was, "It would have been</p> <p>24 that the word here was not entered into the system,</p> <p>25 yes."</p>	<p>1 MR. DIAZ-ARRASTIA: Highlight that from</p> <p>2 Rick Wilson. Let's start with the date.</p> <p>3 MR. LEE: May I make sure he has the</p> <p>4 exhibit in front of him?</p> <p>5 JUDGE DAVIDSON: Sure.</p> <p>6 MR. DIAZ-ARRASTIA: Sure. Joint</p> <p>7 Exhibit 8.</p> <p>8 MR. LEE: Joint Exhibit 8.</p> <p>9 Q. (BY MR. DIAZ-ARRASTIA) Do you have that in</p> <p>10 front of you, sir?</p> <p>11 A. Yes.</p> <p>12 Q. And we talked about this during your</p> <p>13 deposition also. Remember?</p> <p>14 A. I do remember.</p> <p>15 Q. And this is an e-mail from Rick Wilson?</p> <p>16 MR. DIAZ-ARRASTIA: Can you bring back the</p> <p>17 highlighting, Tracy?</p> <p>18 Q. (BY MR. DIAZ-ARRASTIA) From Rick Wilson to</p> <p>19 Eduardo Anaya and you and Ana Campos. Correct?</p> <p>20 A. Seems so, yes.</p> <p>21 Q. And I think you testified in your deposition</p> <p>22 that Ana Campos was another person you supervised?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And Mr. Wilson is responding to a</p> <p>25 request from Mr. Anaya in which he asks, "We need the</p>
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<p>1 "Before this was printed?"</p> <p>2 "Before this was printed."</p> <p>3 Do you remember telling me that back then?</p> <p>4 A. One second. Let me -- okay. I read this.</p> <p>5 Q. That's what you told me back then?</p> <p>6 A. Okay.</p> <p>7 Q. And you told that under oath?</p> <p>8 A. I'm not disputing it.</p> <p>9 Q. Now, let's take a look at these screens that</p> <p>10 are VIN Exhibit No. 4, the second two pages, VIN 93 and</p> <p>11 94. And these were prepared by Eduardo Anaya. Is that</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. The gentleman that doesn't work for Vinmar</p> <p>15 anymore. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. No one knows where he is anymore?</p> <p>18 A. I am not able to answer that question.</p> <p>19 Q. And you testified that he entered country of</p> <p>20 origin, USA, on 7-24?</p> <p>21 A. Correct.</p> <p>22 MR. DIAZ-ARRASTIA: Put this on the</p> <p>23 screen, Tracy, will you?</p> <p>24 Q. (BY MR. DIAZ-ARRASTIA) Will you take a look</p> <p>25 at Joint Exhibit No. 8? Look at Mr. Wilson's e-mail.</p>	<p>1 origin to complete the purchase order." Isn't that what</p> <p>2 he asks for?</p> <p>3 A. "He's asking to complete the order, we need</p> <p>4 port of origin." This is what is written.</p> <p>5 Q. And Mr. Wilson responds, "Re: Origin, we won't</p> <p>6 know until we declare discharge port. Most likely USG."</p> <p>7 That's what he says. Right?</p> <p>8 A. Again, I know that the question for Eduardo</p> <p>9 was, "What is the port of origin?"</p> <p>10 Q. What it says is, "Re: Origin, we won't know</p> <p>11 until we declare discharge port. Most likely USG."</p> <p>12 Correct? That's what it says?</p> <p>13 A. Again, Eduardo and I asked for port of origin</p> <p>14 as a -- as a step into our process. Okay?</p> <p>15 Q. And Wilson is giving Mr. Anaya and you and</p> <p>16 Ms. Campos that information on July 25. Correct?</p> <p>17 A. No. Again, Eduardo Anaya and I asked port of</p> <p>18 origin. Okay? Asked Rick from where this cargo shall</p> <p>19 be shipped from? What is the port of origin in the USA</p> <p>20 that the cargo shall be shipped from? And this is what</p> <p>21 Eduardo and I asked.</p> <p>22 Q. Okay. But Mr. Wilson gives Mr. Anaya his</p> <p>23 answer on July 25?</p> <p>24 A. Okay.</p> <p>25 Q. Correct? That's what that says?</p>

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<p>1 A. He's showing that the answer was given on 2 July 25. 3 Q. But somehow Mr. Anaya already knew on the 24th 4 that the country of origin was the U.S. 5 A. Again, and I re -- I'm coming back to you. 6 I'm saying that the origin was known. What we are -- we 7 are clarifying what -- what is the port of loading. And 8 Mr. Eduardo Anaya is asking the question, "What is the 9 port of loading?" And this is what I think that 10 Mr. Rick Wilson is trying to answer to Mr. Anaya. 11 Q. Okay. And Mr. Anaya's response to Mr. Wilson 12 was, "Okay. That is what you wrote on the PO?" 13 A. Okay. 14 Q. Now, let's take a look at the PO. The PO has 15 a line for origin. Right? 16 A. Okay. 17 Q. It has that. Right? 18 MR. DIAZ-ARRASTIA: Let's put that up, 19 Tracy, Tricon Exhibit 10. 20 Q. (BY MR. DIAZ-ARRASTIA) It has a line for 21 origin. Correct? 22 A. Origin was already put. Remember that I was 23 telling you that whenever we are entering the PO we 24 are -- we have entered the origin of the cargo as a 25 requirement of our system. So the origin of the -- of</p>	<p>1 A. Sorry? 2 Q. Is there any line in the Vinmar purchase order 3 that says port of origin -- I'm sorry -- I mean port of 4 loading? 5 A. So say again. 6 Q. I'm sorry. 7 JUDGE BENTON: Yeah. Ms. Larson is trying 8 to script it for you. Let's try it one more time. 9 MR. DIAZ-ARRASTIA: Yeah. 10 Q. (BY MR. DIAZ-ARRASTIA) Mr. Pascu, on Tricon 11 Exhibit 10, the Vinmar purchase order, is there any line 12 for port of loading? 13 A. Port of loading is not shown on the purchase 14 order because it was never revealed to me; therefore, 15 it's not shown. 16 MR. DIAZ-ARRASTIA: I pass the witness. 17 JUDGE DAVIDSON: Mr. Lee? 18 MR. LEE: No further questions. 19 JUDGE BENTON: You're excused. 20 THE WITNESS: Okay. 21 JUDGE WOOD: Could I ask just one -- 22 JUDGE BENTON: Just one second. You're 23 excused. 24 THE WITNESS: Okay. 25 JUDGE BENTON: Call your next witness.</p>
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<p>1 the -- of the cargo was already shown into SAP and this 2 is what Eduardo is saying. 3 If you are looking to this one, it's 4 showing the origin USA. So this is what we have shown. 5 Now, the port of loading was never clarified and 6 therefore we only want to complete the data. 7 Q. Mr. Pascu, on your purchase order next to 8 origin, there's just a big blank. Right? 9 A. Again -- 10 Q. Can you answer my question? 11 A. What question? 12 Q. Next to origin there's a big blank? 13 A. Again, you are -- you are asking me -- 14 JUDGE BENTON: Just a second. 15 Irrespective of what the witness says, the panel can 16 read. And it is apparent to the panel what the document 17 says. 18 MR. DIAZ-ARRASTIA: All right. 19 JUDGE BENTON: Let's proceed. 20 Q. (BY MR. DIAZ-ARRASTIA) Then let's ask you one 21 more question, Mr. Anaya. 22 A. No. Pascu. 23 Q. Mr. Pascu. I'm sorry. On your purchase 24 order, Joint Exhibit No. 10, is there any line in there 25 for port of origin?</p>	<p>1 MR. LEE: We have no more witnesses. 2 Subject to the briefing schedule that we 3 discussed and the opportunity to respond to their 4 attorneys' fees. 5 JUDGE BENTON: Okay. So the live 6 testimony is concluded. But for the record, the 7 evidence is not concluded. The record is not closed. 8 And so there will be no need to convene tomorrow. 9 Correct? 10 MR. DIAZ-ARRASTIA: There will be no need 11 to meet tomorrow, but let me ask something. I 12 understand that the record is not closed because 13 obviously there's going to be argument, but is there 14 contemplation that there will be additional evidence 15 presented in writing? 16 JUDGE BENTON: Yeah. The evidence is -- 17 JUDGE DAVIDSON: Attorneys' fees. 18 MR. DIAZ-ARRASTIA: Oh, my attorneys' 19 fees. 20 MR. LEE: But other than that -- 21 MR. DIAZ-ARRASTIA: Other than that, the 22 evidence is -- 23 JUDGE DAVIDSON: Well, and he may want 24 to -- 25 MR. LEE: And my response.</p>

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<p>1 JUDGE DAVIDSON: And he may want to rebut 2 your attorneys' fees. 3 MR. DIAZ-ARRASTIA: Okay. But we're 4 talking about just the attorneys' fees? 5 MR. LEE: Correct. 6 MR. DIAZ-ARRASTIA: I just wanted to 7 clarify. 8 MR. LEE: I mean, certainly I would -- I 9 might have evidence in response to his attorneys' 10 fees. 11 JUDGE BENTON: As I -- I think I got it 12 right the first time. 13 MR. DIAZ-ARRASTIA: Yes, you did, Your 14 Honor. 15 JUDGE BENTON: Anything else? 16 MR. DIAZ-ARRASTIA: Nothing else here. 17 And there will be not be a need to meet tomorrow. 18 JUDGE BENTON: Okay. 19 MR. LEE: One housekeeping matter, and 20 it's entirely up to the panel. Would you like for us to 21 submit a revised exhibit list and pull out or just keep 22 everything that you got and leave it? 23 Okay. Then -- 24 JUDGE WOOD: I'm afraid if you changed any 25 of these numbers I'd be totally lost.</p>	<p>1 record. 2 (Proceedings concluded at 4:37 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 MR. DIAZ-ARRASTIA: It will make things 2 more -- 3 MS. LARSON: The transcript would be 4 impossible. 5 MR. DIAZ-ARRASTIA: It would make things 6 more difficult. 7 JUDGE WOOD: I know that. 8 JUDGE BENTON: Okay. We're still on the 9 record. We're probably giving the reporter a problem. 10 Anything else before we go off the record? 11 MR. DIAZ-ARRASTIA: I'm done. 12 JUDGE BENTON: Okay. Mr. Lee? 13 MR. LEE: I'm done. I guess just -- there 14 were some exhibits that weren't discussed, but as I 15 understand it are they in? 16 JUDGE BENTON: They're in. 17 MR. LEE: Okay. 18 JUDGE DAVIDSON: All of yours, all of his, 19 all of joints. 20 JUDGE BENTON: Judge Wood, anything else 21 you need? 22 Judge Davidson? 23 JUDGE DAVIDSON: I'm as happy as a pig in 24 slop. 25 JUDGE BENTON: All right. We're off the</p>	<p>1 STATE OF TEXAS ) 2 COUNTY OF HARRIS ) 3 4 I, Diana Ramos, a Certified Shorthand Reporter 5 in and for the State of Texas, do hereby certify that 6 the above and foregoing pages contain a full, true and 7 correct transcription of my shorthand notes taken upon 8 the occasion set forth in the caption hereof, as reduced 9 to writing by me and under my supervision. 10 I further certify that the transcription of my 11 notes truly and correctly reflects the exhibits offered 12 into evidence, if any; that I am neither counsel for nor 13 related to any party in this cause and am not 14 financially interested in the outcome. 15 Certified to by me on this 28th day of 16 September, 2010. 17 18 19 20 21 22 23 24 25</p> <p>Diana Ramos CSR Texas CSR No. 3133 Expiration Date: 12-31-2010 DEPOTEXAS Firm Registration No. 95 13101 Northwest Freeway, Suite 210 Houston, Texas 77040 Tel: (281) 469-5580 FAX: (713) 460-2525</p>